MONTANA

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MONTANA CODE ANNOTATED

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Code Commissioner

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CHAPTER 1

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Part 1

General Provisions

50-1-101. Definitions. Unless the context indicates otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

(2) "Communicable disease" means a disease designated communicable by the department.

(3) "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

History: En. Sec. 2, Ch. 197, L. 1967; amd. Sec. 28, Ch. 349, L. 1974; R.C.M. 1947, 69-4102.

50-1-102. Legal adviser to board and department. The attorney general is legal adviser to the board and department. If the county attorney fails to act and with the approval of the attorney general, the department may retain special counsel and compensate him from appropriations to the department.

History: En. Sec. 11, Ch. 197, L. 1967; amd. Sec. 32, Ch. 349, L. 1974; amd. Sec. 2, Ch. 288, L. 1977; R.C.M. 1947, 69-4111(part).

50-1-103. Enforcement of public health laws. (1) Either the county attorney of a county where a cause of action arises or the department may bring an action necessary to abate, restrain, or prosecute the violation of public health laws.

(2) Except as otherwise provided in the public health laws administered by the board or the department, the department may, through the attorney general or appropriate county attorney, sue in district court to enjoin any violation of the public health laws, rules, or orders adopted or issued under the public health laws administered by the board or department.

History: **En. Sec. 11, Ch. 197, L. 1967; amd. Sec. 32, Ch. 349, L. 1974; amd. Sec. 2, Ch. 288, L. 1977; R.C.M. 1947, 69-4111(part).**

50-1-104. General penalty. Anyone who violates a rule adopted by the board or the department for which no penalty is specified is guilty of a misdemeanor.

History: **En. Sec. 221, Ch. 197, L. 1967; amd. Sec. 82, Ch. 349, L. 1974; R.C.M. 1947, 69-5701.**

Part 2

Department

50-1-201. Administration of state health plan. The department is hereby established as the sole and official state agency to administer the state program for comprehensive health planning and is hereby authorized to prepare a plan for comprehensive state health planning. The department is authorized to confer and cooperate with any and all other persons, organizations, or governmental agencies that have an interest in public health problems and needs. The department, while acting in this capacity as the sole and official state agency to administer and supervise the administration of the official comprehensive state health plan, is designated and authorized as the sole and official state agency to accept, receive, expend, and administer any and all funds which are now available or which may be donated, granted, bequeathed, or appropriated to it for the preparation and administration and the supervision of the preparation and administration of the comprehensive state health plan.

History: **En. 69-4110.1 by Sec. 1, Ch. 184, L. 1969; amd. Sec. 109, Ch. 349, L. 1974; R.C.M. 1947, 69-4110.1.**

50-1-202. General powers and duties. The department shall:

(1) study conditions affecting the citizens of the state by making use of birth, death, and sickness records;

(2) make investigations, disseminate information, and make recommendations for control of diseases and improvement of public health to persons, groups, or the public;

(3) at the request of the governor, administer any federal health program for which responsibilities are delegated to states;

(4) inspect and work in conjunction with custodial institutions and Montana university system units periodically as necessary and at other times on request of the governor;

(5) after each inspection made under subsection (4) of this section, submit a written report on sanitary conditions to the governor and to the director of institutions or commissioner of higher education and include recommendations for improvement in conditions if necessary;

(6) advise state agencies on location, drainage, water supply, disposal of excreta, heating, plumbing, sewer systems, and ventilation of public buildings;

(7) organize laboratory services and provide equipment and personnel for those services;

(8) develop and administer activities for the protection and improvement of dental health and supervise dentists employed by the state, local boards of health, or schools;

(9) develop and administer a program to protect the health of mothers and children;

(10) conduct health education programs;

(11) provide consultation to school and local community health nurses in the performance of their duties;

(12) consult with the superintendent of public instruction on health measures for schools;

(13) develop and administer a program for services to handicapped children including diagnosis, medical, surgical, and corrective treatment, and after-care and related services;

(14) provide consultation to local boards of health;

(15) bring actions in court for the enforcement of the health laws and defend actions brought against the board or department;

(16) accept and expend federal funds available for public health services;

(17) have the power to use personnel of local departments of health to assist in the administration of laws relating to public health;

(18) adopt rules imposing fees for the tests and services performed by the laboratory of the department. In adopting a rule imposing fees, the department may establish only a fee that will reimburse the department for the costs incurred in performing tests and services. All fees shall be deposited in the general fund.

(19) adopt and enforce rules regarding the definition of communicable diseases and the reporting and control of communicable diseases; and

(20) adopt and enforce rules regarding the transportation of dead human bodies.

History: En. Sec. 10, Ch. 197, L. 1967; amd. Sec. 31, Ch. 349, L. 1974; amd. Sec. 1, Ch. 288, L. 1977; R.C.M. 1947, 69-4110; amd. Sec. 7, Ch. 200, L. 1979; amd. Sec. 1, Ch. 219, L. 1979.

50-1-203. Sanitary inspections. (1) The department shall make sanitary inspections of schoolhouses, churches, theaters, jails, and other buildings or facilities where persons assemble. If the facility is found unsanitary, the department shall direct that conditions be corrected within a reasonable time. If the unsanitary conditions are not corrected within the time specified, the building or facility is a public nuisance.

(2) Either the department or a local board of health shall bring an action to correct the unsanitary conditions in the way provided by law for abating a public nuisance.

History: En. Sec. 18, Ch. 197, L. 1967; amd. Sec. 1, Ch. 336, L. 1971; amd. Sec. 108, Ch. 349, L. 1974; R.C.M. 1947, 69-4118.

50-1-204. Quarantine measures. The department may adopt and enforce quarantine measures against a state, county, or municipality to prevent the spread of communicable disease. A person who does not comply with quarantine measures shall, on conviction, be fined not less than $10 or more than $100. Receipts from fines shall be deposited in the state general fund.

History: En. Sec. 12, Ch. 197, L. 1967; amd. Sec. 33, Ch. 349, L. 1974; R.C.M. 1947, 69-4112.

50-1-205. Repealed. Sec. 2, Ch. 219, L. 1979.

History: En. Sec. 92, Ch. 197, L. 1967; R.C.M. 1947, 69-4515.

50-1-206. Regulation of schools in matters of health. (1) The department shall adopt regulations prescribing the requirements for school sites, water supply, sewage and waste disposal, and any other matters pertinent to the health and physical well-being of the pupils, teachers, and others who frequent schools.

(2) The department shall furnish to the districts copies of such regulations.

History: En. 75-8207 by Sec. 479, Ch. 5, L. 1971; amd. Sec. 12, Ch. 504, L. 1977; R.C.M. 1947, 75-8207.

Part 3

Board

50-1-301. Duties of board. The board shall:

(1) advise the department in public health matters;

(2) hold hearings, administer oaths, subpoena witnesses, and take testimony in matters relating to the duties of the board.

History: En. Sec. 6, Ch. 197, L. 1967; amd. Sec. 28, Ch. 93, L. 1969; amd. Sec. 30, Ch. 349, L. 1974; R.C.M. 1947, 69-4106.

50-1-302. Board meetings. (1) The board may adopt bylaws governing meetings.

(2) The director of health and environmental sciences shall serve as secretary to the board.

(3) The board shall meet once every two months and may hold additional meetings on the call of the chair, at the request of the director of health and environmental sciences, or at the request of a majority of the members.

(4) If a member has three unexcused absences from meetings in a calendar year, his position is vacant and the governor shall appoint a person to replace him.

(5) In suits or proceedings in which board actions are the subject of inquiry, meetings shall be considered to have been called and held unless the contrary is proven.

History: En. Sec. 4, Ch. 197, L. 1967; amd. Sec. 29, Ch. 349, L. 1974; R.C.M. 1947, 69-4104.

CHAPTER 2

LOCAL BOARDS OF HEALTH

Part 1 — General Provisions

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Part 1

General Provisions

50-2-101. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Communicable disease" means a disease designated communicable by the department.

(2) "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

(3) "Local board" means a county, city, city-county, or district board of health.

(4) "Local health officer" means a county, city, city-county, or district health officer appointed by the local board.

(5) "Physician" means a physician legally authorized to practice medicine in this state.

History: (1), (2)En. Sec. 2, Ch. 197, L. 1967; amd. Sec. 28, Ch. 349, L. 1974; Sec. 69-4102, R.C.M. 1947; (3) thru (5)En. Sec. 78, Ch. 197, L. 1967; Sec. 69-4501, R.C.M. 1947; R.C.M. 1947, 69-4102(2), (3), 69-4501.

50-2-102. Repealed. Sec. 9, Ch. 200, L. 1979.

History: En. Sec. 79, Ch. 197, L. 1967; amd. Sec. 54, Ch. 349, L. 1974; R.C.M. 1947, 69-4502.

50-2-103. Federal funds. The department may accept funds for public health from an agency of the federal government or from any other agency or person and allocate funds to local boards.

History: En. Sec. 80, Ch. 197, L. 1967; amd. Sec. 55, Ch. 349, L. 1974; R.C.M. 1947, 69-4503.

50-2-104. County boards of health. (1) There is a county board of health in each county consisting of:

(a) the county commissioners and two members who are appointed by the county commissioners and serve at their pleasure; or

(b) five persons who are appointed by the county commissioners and serve at their pleasure.

(2) Terms of appointed members shall be staggered and be for 3 years each.

(3) The county commissioners shall establish the staggered order of terms and all rules necessary to establish and maintain the board.

History: En. Sec. 81, Ch. 197, L. 1967; amd. Sec. 1, Ch. 216, L. 1969; amd. Sec. 20, Ch. 187, L. 1977; R.C.M. 1947, 69-4504.

50-2-105. City boards of health. (1) There is a city board of health in each first- and second-class city consisting of five persons who are appointed by the governing body of the city and serve at its pleasure.

(2) Terms of appointed members shall be staggered and shall be for 3 years each.

(3) The governing body of the city shall establish the staggered order of terms and all regulations necessary to establish and maintain the board.

History: En. Sec. 82, Ch. 197, L. 1967; amd. Sec. 2, Ch. 216, L. 1969; R.C.M. 1947, 69-4505.

50-2-106. City-county boards of health. (1) By mutual agreement between the county commissioners and the governing body of the city, the county and a first- or second-class city or cities may form a city-county board of health.

(2) A city-county board of health consists of:

(a) one person appointed by the county commissioners who serves at their pleasure;

(b) one person appointed by the governing body of each city that participates in the city-county board who serves at the pleasure of the appointing governing body;

(c) additional members appointed by the county commissioners and governing body or bodies of the city or cities participating in the city-county board as mutually agreed upon who serve at the pleasure of the appointing commissioners or governing body.

(3) The board shall be composed of at least five persons. Terms of appointed members shall be staggered and shall be for 3 years each.

(4) By mutual agreement between the county commissioners and the governing body of the city, they shall establish the staggered order of terms and all regulations necessary to establish and maintain the board.

History: En. Sec. 83, Ch. 197, L. 1967; amd. Sec. 3, Ch. 216, L. 1969; R.C.M. 1947, 69-4506.

50-2-107. District boards of health. (1) By mutual agreement, two or more adjacent counties may unite to create a district board of health. First- and second-class cities located in those counties may elect to be included in the district.

(2) A district board of health consists of:

(a) one person appointed by the county commissioners of each county in the district who serves at the pleasure of the appointing commissioners;

(b) one person appointed by the governing body of each city that elects to be included in the district who serves at the pleasure of the appointing governing body;

(c) additional members appointed by the county commissioners of each county that participates in the district board as mutually agreed upon who serve at the pleasure of the appointing commissioners.

History: **En. Sec. 84, Ch. 197, L. 1967; R.C.M. 1947, 69-4507.**

50-2-108. Financing of local boards. Local boards are financed by general fund appropriations, special levy appropriations, state and federal funds available, and contributions from school boards and other official and nonofficial agencies.

History: **En. Sec. 85, Ch. 197, L. 1967; amd. Sec. 1, Ch. 351, L. 1974; amd. Sec. 21, Ch. 187, L. 1977; R.C.M. 1947, 69-4508(1).**

50-2-109. County board appropriations. County boards are financed by an appropriation from the general fund of the county after approval of a budget in the way provided for other county offices and departments under Title 7, chapter 6, part 23.

History: **En. Sec. 85, Ch. 197, L. 1967; amd. Sec. 1, Ch. 351, L. 1974; amd. Sec. 21, Ch. 187, L. 1977; R.C.M. 1947, 69-4508(2)(a).**

50-2-110. City board appropriations. City boards are financed by an appropriation from the general fund of the city after approval of a budget in the way provided for other city offices and departments under Title 7, chapter 6, part 42.

History: **En. Sec. 85, Ch. 197, L. 1967; amd. Sec. 1, Ch. 351, L. 1974; amd. Sec. 21, Ch. 187, L. 1977; R.C.M. 1947, 69-4508(2)(b).**

50-2-111. City-county board appropriations. If a city-county board is created, it is financed by one of the following methods:

(1) (a) The county commissioners and governing body of each participating city may mutually agree upon the division of expenses.

(b) The county's part of the total expenses is financed by an appropriation from the general fund of the county after approval of a budget in the way provided for other county offices and departments under Title 7, chapter 6, part 23.

(c) Each participating city's part of the total expenses is financed by an appropriation from the general fund of the city after approval of a budget in the way provided for other city offices and departments under Title 7, chapter 6, part 42.

(d) All money shall be deposited with the county treasurer who shall disburse them as county funds.

(2) (a) In first- and second-class counties, the county commissioners and governing body of each participating city may mutually agree upon the division of the expenses.

(b) The county's part of the total expenses is financed by a special levy of not more than 5 mills on the taxable valuation of all property outside the incorporated limits of each participating city after approval of a budget in the way provided for other county offices and departments under Title 7, chapter 6, part 23. If the 5-mill levy is not sufficient to fund the county's share, the county commissioners may supplement it with an appropriation from the county general fund.

(c) Each participating city's part of the total expenses is financed by a special levy of not more than 5 mills on the taxable valuation of all property within the incorporated limits of the city after approval of a budget in the way provided for other city offices and departments under Title 7, chapter 6, part 42.

(d) All money shall be deposited with the county treasurer who shall disburse them as county funds.

(e) The special levies authorized by this subsection are in addition to all other levies authorized by law.

History: En. Sec. 85, Ch. 197, L. 1967; amd. Sec. 1, Ch. 351, L. 1974; amd. Sec. 21, Ch. 187, L. 1977; R.C.M. 1947, 69-4508(2)(c).

50-2-112. District board appropriations. (1) District boards are financed by appropriations from the general funds of each county in the district in proportion to the population in each county.

(2) First- and second-class cities which elect to be included in the district contribute to the county in which they are located in the way provided for city-county boards under 50-2-111.

(3) All funds shall be deposited with the county treasurer of one of the counties as agreed upon by the commissioners of the counties in the district. The county treasurer shall disburse the funds as county funds.

History: En. Sec. 85, Ch. 197, L. 1967; amd. Sec. 1, Ch. 351, L. 1974; amd. Sec. 21, Ch. 187, L. 1977; R.C.M. 1947, 69-4508(2)(d).

50-2-113. Contributions by school boards and other agencies authorized. School boards and other official and nonofficial agencies may contribute funds to a local board.

History: En. Sec. 85, Ch. 197, L. 1967; amd. Sec. 1, Ch. 351, L. 1974; amd. Sec. 21, Ch. 187, L. 1977; R.C.M. 1947, 69-4508(3).

50-2-114. Special mill levy. If the general fund of a city or county is not sufficient to meet the approved budget, a levy of not more than 1 mill may be made on the taxable valuation of all property in the city or county in addition to all other levies authorized by law. This section does not apply when the board has been financed under 50-2-111(2).

History: En. Sec. 85, Ch. 197, L. 1967; amd. Sec. 1, Ch. 351, L. 1974; amd. Sec. 21, Ch. 187, L. 1977; R.C.M. 1947, 69-4508(4).

50-2-115. Legal adviser to local boards. The county attorney shall serve as legal adviser to local boards as established by 50-2-104 and 50-2-106. The county attorney shall represent the local board in those matters relating to the functions, powers, and duties of local boards.

History: En. 69-4508.1 by Sec. 1, Ch. 273, L. 1975; R.C.M. 1947, 69-4508.1.

50-2-116. Powers and duties of local boards. (1) Local boards shall:

(a) appoint a local health officer who is a physician or a person with a master's degree in public health or equivalent and appropriate experience as determined by the department and fix his salary;

(b) elect a chairman and other necessary officers;

(c) employ necessary qualified staff;

(d) adopt bylaws to govern meetings;

(e) hold regular meetings quarterly and hold special meetings as necessary;

(f) supervise destruction and removal of all sources of filth which cause disease;

(g) guard against the introduction of communicable disease;

(h) supervise inspections of public establishments for sanitary conditions.

(2) Local boards may:

(a) quarantine persons who have communicable diseases;

(b) require isolation of persons or things which are infected with communicable diseases;

(c) furnish treatment for persons who have communicable diseases;

(d) prohibit the use of places which are infected with communicable diseases;

(e) require and provide means for disinfecting places which are infected with communicable diseases;

(f) accept and spend funds received from a federal agency, the state, a school district, or other persons;

(g) contract with another local board for all or a part of local health services;

(h) reimburse local health officers for necessary expenses incurred in official duties;

(i) abate nuisances affecting public health and safety or bring action necessary to restrain the violation of public health laws or rules;

(j) adopt necessary regulations and fees for the control and disposal of sewage from private and public buildings not currently connected to any municipal system (fees shall be deposited with the county treasurer);

(k) adopt rules which do not conflict with rules adopted by the department:

(i) for the control of communicable diseases;

(ii) for the removal of filth which might cause disease or adversely affect public health;

(iii) on sanitation in public buildings which affects public health;

(iv) for heating, ventilation, water supply, and waste disposal in public accommodations which might endanger human lives.

History: En. Sec. 86, Ch. 197, L. 1967; amd. Sec. 4, Ch. 216, L. 1969; amd. Sec. 1, Ch. 196, L. 1971; amd. Secs. 108, 111, Ch. 349, L. 1974; amd. Sec. 2, Ch. 273, L. 1975; R.C.M. 1947, 69-4509.

50-2-117. Appointment of local health officer by department when not made by local board. (1) If the county commissioners or governing body of a first- or second-class city do not appoint a health officer, the department may appoint a health officer 30 days after notification in writing has been given to the county commissioners or governing body of the city.

(2) A health officer appointed by the department has the same authority as a health officer appointed by a local board.

History: En. Sec. 88, Ch. 197, L. 1967; amd. Sec. 108, Ch. 349, L. 1974; R.C.M. 1947, 69-4511.

50-2-118. Powers and duties of local health officers. (1) Local health officers or their authorized representatives shall:

(a) make inspections for sanitary conditions;

(b) as directed by the local board, issue written orders for the destruction and removal of filth which might cause disease;

(c) with written approval of the department, order buildings or facilities where people congregate closed during epidemics;

(d) on forms provided by the department, report communicable diseases to the department each week;

(e) before the first day of January, April, July, and October, give a report to the local board of sanitary conditions in the county, city, city-county, or district, together with a detailed account of his activities, on forms and containing information required by the department;

(f) before the 10th day after the report is given to the local board, send a copy of the report required by subsection (1)(e) of this section to the department;

(g) as prescribed by rules adopted by the department, establish and maintain quarantines;

(h) as prescribed by rules adopted by the department, supervise the disinfection of places at the expense of the local board when a period of quarantine ends;

(i) notify the department of his appointment and changes in membership of the local board;

(j) file a complaint with the appropriate court if this chapter or rules adopted by the local board or state department under this chapter are violated;

(k) validate state licenses issued by the department in accordance with chapters 50, 51, and 52 of this title.

(2) With approval of the department, local health officers may forbid persons to assemble in a place if the assembly endangers public health.

(3) A local health officer who is a physician may be placed in charge of a communicable disease hospital, but a local health officer who is a physician is not required to act as a physician to the indigent.

(4) A local health officer who is not a physician shall not act as a physician to anyone.

History: En. Sec. 87, Ch. 197, L. 1967; amd. Sec. 2, Ch. 196, L. 1971; amd. Sec. 56, Ch. 349, L. 1974; R.C.M. 1947, 69-4510; amd. Sec. 1, Ch. 200, L. 1979.

50-2-119. Nursing services. (1) A local board may employ a qualified nurse for nursing services to persons under a physician's care who are confined to their homes.

(2) Before nursing services are provided, a physician must:

(a) determine that the person needs the services of a visiting nurse;

(b) direct the nurse to visit the person;

(c) specify the type and duration of services to be performed by the nurse.

(3) Persons shall pay for the services at rates set by the local board. Local boards, on behalf of persons receiving services, may accept payment from persons or public agencies either directly from or by contract with the person or agency. All payments received shall be deposited in a special county or city fund and used to defray expenses of providing the service.

History: En. Sec. 89, Ch. 197, L. 1967; R.C.M. 1947, 69-4512.

50-2-120. Assistance from law enforcement officials. A state or local health officer may request a sheriff, constable, or other peace officer to assist him in carrying out the provisions of this chapter. If the officer does not render the service, he is guilty of a misdemeanor and may be removed from office.

History: En. Sec. 90, Ch. 197, L. 1967; R.C.M. 1947, 69-4513; amd. Sec. 1, Ch. 37, L. 1979.

50-2-121. Removal of diseased prisoner from jail by local health officer. (1) On written order of a local health officer, a diseased prisoner who is held in a jail and who is considered dangerous to the health of other prisoners may be removed to a hospital or other place of safety.

(2) If the prisoner was committed to jail by order of court, the order for removal and treatment shall be signed by the local health officer and filed with the court.

(3) When the prisoner recovers from the disease, he shall be returned to the jail.

(4) A prisoner removed to a hospital or clinic for treatment shall not be considered to have committed an escape.

History: En. Sec. 93, Ch. 197, L. 1967; R.C.M. 1947, 69-4516.

50-2-122. Obstructing local health officer in the performance of his duties unlawful. It is unlawful to:

(1) hinder a local health officer in the performance of his duties under this chapter;

(2) remove or deface any placard or notice posted by the local health officer; or

(3) violate a quarantine regulation.

History: En. Sec. 94, Ch. 197, L. 1967; R.C.M. 1947, 69-4517.

50-2-123. Compliance order authorized. If a person refuses or neglects to comply with a written order of a state or local health officer within a reasonable time specified in the order, the state or local health officer may cause the order to be complied with and initiate an action to recover any expenses incurred from the person who refused or neglected to comply with the order. The action to recover expenses shall be brought in the name of the city or county.

History: En. Sec. 96, Ch. 197, L. 1967; amd. Sec. 108, Ch. 349, L. 1974; amd. Sec. 3, Ch. 273, L. 1975; R.C.M. 1947, 69-4519(1).

50-2-124. Penalties for violations. (1) A person who does not comply with rules adopted by a local board is guilty of a misdemeanor. On conviction, he shall be fined not less than $10 or more than $50.

(2) Except as provided in subsection (1) of this section and 50-2-123, a person who violates the provisions of this chapter or rules adopted by the department under the provisions of this chapter is guilty of a misdemeanor. On conviction, he shall be fined not less than $10 or more than $500, imprisoned for not more than 90 days, or both.

(3) Each day of violation constitutes a separate offense.

(4) Fines shall be paid to the county treasurer of the county in which the violation occurs.

History: En. Sec. 96, Ch. 197, L. 1967; amd. Sec. 108, Ch. 349, L. 1974; amd. Sec. 3, Ch. 273, L. 1975; R.C.M. 1947, 69-4519(2) thru (4).

CHAPTER 3

FIRE MARSHAL BUREAU

Part 1 — General Provisions

Section
50-3-101. Definitions.
50-3-102. Powers and duties of state fire marshal.
50-3-103. Rules promulgated by state fire marshal.
50-3-104. Fire marshal not to engage in other business.
50-3-105. Appointment of acting fire marshal.
50-3-106. Appointment of special deputy state fire marshals.
50-3-107. Appointment of assistants and clerical employees.
50-3-108. Oath of office required.
50-3-109. Tax on fire insurance premiums for maintenance of bureau.

Part 1

General Provisions

50-3-101. Definitions. In this chapter the following definitions apply:

(1) "Bureau" means the fire marshal bureau provided for in 2-15-2005.

(2) "Fire marshal" or "state fire marshal" means the state fire marshal provided for in 2-15-2005.

History: En. 50-3-101 by Code Commissioner, 1979.

50-3-102. Powers and duties of state fire marshal. (1) For the purpose of reducing the state's fire loss, the state fire marshal shall:

(a) make at least one inspection a year of each state institution and submit a copy of the report to the department of institutions with recommendations in regard to fire prevention, fire protection, and public safety;

(b) make at least one inspection a year of each unit of the Montana university system and submit a copy of the report to the commissioner of higher education with recommendations in regard to fire prevention, fire protection, and public safety;

(c) inspect public, business, or industrial buildings and require conformance to law and rules promulgated under the provisions of this chapter;

(d) assist local fire and law enforcement authorities in arson investigations and supervise such investigations when, in his judgment, supervision is necessary;

(e) review all training programs on investigation of accidental and incendiary fires;

(f) provide fire prevention and fire protection information to public officials and the general public;

(g) encourage and assist local fire authorities in fire prevention programs and adopt standards and implement a program to encourage fire departments to meet such standards;

(h) be the state entity primarily responsible for promoting fire safety at the state level and to represent the state in structural fire matters;

(i) encourage coordination of all services and agencies in structural fire matters to reduce duplication and fill voids in services;

(j) establish rules concerning responsibilities and procedures to be followed when there is a threat of explosive material in a building housing state offices;

(k) keep in his office a record of all fires occurring in the state, the origin of the fires, and all facts, statistics, and circumstances relating thereto which have been determined by investigations under the provisions of chapter 63 of this title; and, except for statements of witnesses given during an investigation and information that may be held in confidence under 50-63-403, the record shall be open at all times to public inspection; and

(l) make an annual report to the attorney general containing a detailed statement of his official action and the transactions of his department, and the attorney general shall, in turn, submit the report to the governor with such recommendations and comments thereon as he considers necessary.

(2) The state fire marshal may:

(a) adopt rules necessary for safeguarding life and property from the hazards of fire and explosion and carrying into effect the fire prevention laws of this state; and

(b) if necessary to safeguard life and property under rules promulgated pursuant to this section, maintain an action to enjoin the use of all or a portion of a building or restrain a specific activity until there is compliance with the rules.

History: Ap. p. Sec. 1, Ch. 124, L. 1929; re-en. Sec. 2737.1, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1943; amd. Sec. 1, Ch. 278, L. 1947; amd. Sec. 93, Ch. 199, L. 1965; amd. Sec. 2, Ch. 229, L. 1967; amd. Sec. 24, Ch. 366, L. 1969; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 1, Ch. 169, L. 1975; amd. Sec. 34, Ch. 187, L. 1977; amd. Sec. 2, Ch. 519, L. 1977; Sec. 82-1202, R.C.M. 1947; (1)(k), (1)(l)En. Secs. 19, 22, Ch. 148, L. 1911; re-en. Secs. 2756, 2759, R.C.M. 1921; re-en. Secs. 2756, 2759, R.C.M. 1935; amd. Secs. 36, 37, Ch. 187, L. 1977; Secs. 82-1226, 82-1229, R.C.M. 1947; R.C.M. 1947, 82-1202(1), (2), 82-1226, 82-1229; amd. Sec. 6, Ch. 145, L. 1979.

50-3-103. Rules promulgated by state fire marshal. (1) Rules promulgated by the state fire marshal by authority of 50-3-102 shall be reasonable and calculated to effect the purposes of this chapter. They shall include but not be limited to requirements for design, construction, installation, operation, storage, handling, maintenance, or use of structural requirements for various types of construction; building restrictions within congested districts; exit facilities from structures; fire alarm systems and fire extinguishing systems; fire emergency drills; flue and chimney construction; heating devices; electrical wiring and equipment; air conditioning, ventilating, and other duct systems; refrigeration systems; flammable liquids; oil and gas wells; application of flammable finishes; explosives, acetylene, liquefied petroleum gas, and similar products; calcium carbide and acetylene generators; flammable motion picture film, combustible fibers; hazardous chemicals; rubbish, open flame devices; parking of vehicles; dust explosions; lightning protection; and other special fire hazards.

(2) If rules relate to building and equipment standards covered by the state or a municipal building code, the rules are effective upon approval of the department of administration and filing with the secretary of state.

(3) Standards of the national fire protection association, United States bureau of standards, and American insurance association may be adopted in whole or in part by reference.

(4) Rules shall be adopted as prescribed in the Montana Administrative Procedure Act.

(5) Any person violating any rule made under the provisions of this part shall be guilty of a misdemeanor.

History: Ap. p. 82-1202.1 by Sec. 3, Ch. 229, L. 1967; amd. Sec. 1, Ch. 120, L. 1969; amd. Sec. 25, Ch. 366, L. 1969; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 1, Ch. 426, L. 1975; Sec. 82-1202.1, R.C.M.; Ap. p. Sec. 1, Ch. 124, L. 1929; amd. Sec. 1, Ch. 18, L. 1943; amd. Sec. 1, Ch. 278, L. 1947; amd. Sec. 93, Ch. 199, L. 1965; amd. Sec. 2, Ch. 229, L. 1967; amd. Sec. 24, Ch. 366, L. 1969; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 1, Ch. 169, L. 1975; amd. Sec. 34, Ch. 187, L. 1977; amd. Sec. 2, Ch. 519, L. 1977; Sec. 82-1202, R.C.M. 1947; R.C.M. 1947, 82-1202(3), (4), 82-1202.1(1) thru (3), (5).

50-3-104. Fire marshal not to engage in other business. The state fire marshal shall not engage in any other business. He shall at all times be in the office of the state fire marshal ready for the performance of the duties required of him by law.

History: En. Sec. 4, Ch. 148, L. 1911; re-en. Sec. 2741, R.C.M. 1921; re-en. Sec. 2741, R.C.M. 1935; R.C.M. 1947, 82-1207.

50-3-105. Appointment of acting fire marshal. In an emergency or during the absence or disability of the state fire marshal, the attorney general may appoint an acting fire marshal who shall perform the duties of the office or any duty which may be assigned to him, such appointment to cease when the necessity therefor has been relieved.

History: En. Sec. 5, Ch. 148, L. 1911; amd. Sec. 1, Ch. 95, L. 1913; re-en. Sec. 2742, R.C.M. 1921; re-en. Sec. 2742, R.C.M. 1935; amd. Sec. 5, Ch. 229, L. 1967; amd. Sec. 1, Ch. 184, L. 1973; amd. Sec. 20, Ch. 453, L. 1977; R.C.M. 1947, 82-1208(1).

50-3-106. Appointment of special deputy state fire marshals. (1) The state fire marshal may appoint special deputy state fire marshals throughout the state and define their duties.

(2) When performing these duties or attending a training course conducted by the state fire marshal, special deputy fire marshals may be paid at a rate not to exceed $56 a day plus travel expenses as provided for in 2-18-501 through 2-18-503, as amended.

History: En. Sec. 5, Ch. 148, L. 1911; amd. Sec. 1, Ch. 95, L. 1913; re-en. Sec. 2742, R.C.M. 1921; re-en. Sec. 2742, R.C.M. 1935; amd. Sec. 5, Ch. 229, L. 1967; amd. Sec. 1, Ch. 184, L. 1973; amd. Sec. 20, Ch. 453, L. 1977; R.C.M. 1947, 82-1208(2); amd. Sec. 1, Ch. 121, L. 1979.

50-3-107. Appointment of assistants and clerical employees. The fire marshal may appoint assistants and clerical employees to perform duties as specified by the marshal to assist in carrying out the duties assigned him by law.

History: En. Sec. 5, Ch. 148, L. 1911; amd. Sec. 1, Ch. 95, L. 1913; re-en. Sec. 2742, R.C.M. 1921; re-en. Sec. 2742, R.C.M. 1935; amd. Sec. 5, Ch. 229, L. 1967; amd. Sec. 1, Ch. 184, L. 1973; amd. Sec. 20, Ch. 453, L. 1977; R.C.M. 1947, 82-1208(3).

50-3-108. Oath of office required. The state fire marshal shall file the oath of office required of all public officers. Any special deputy fire marshal appointed under the provisions of this chapter shall also file the oath of office required of all public officers.

History: En. Sec. 23, Ch. 148, L. 1911; re-en. Sec. 2760, R.C.M. 1921; re-en. Sec. 2760, R.C.M. 1935; amd. Sec. 42, Ch. 177, L. 1965; R.C.M. 1947, 82-1230.

50-3-109. Tax on fire insurance premiums for maintenance of bureau. Each insurer authorized to effect insurance on risks enumerated in 19-11-512 doing business in this state shall pay to the state auditor and commissioner of insurance ex officio during the month of February or March in each year, in addition to the taxes on premiums required by law to be paid by it, a tax of ¾ of 1% on the fire portion of the direct premiums on such risks received during the calendar year next preceding after deducting cancellations and return premiums.

History: En. Sec. 24, Ch. 148, L. 1911; re-en. Sec. 2761, R.C.M. 1921; re-en. Sec. 2761, R.C.M. 1935; amd. Sec. 1, Ch. 83, L. 1941; amd. Sec. 1, Ch. 162, L. 1947; amd. Sec. 1, Ch. 182, L. 1959; amd. Sec. 1, Ch. 312, L. 1969; amd. Sec. 1, Ch. 110, L. 1971; R.C.M. 1947, 82-1231.

CHAPTER 4

RESERVED

CHAPTER 5

HOSPITALS AND RELATED FACILITIES

Part 1 — General Provisions

Section
50-5-101. Definitions.
50-5-102. Repealed. Sec. 27, Ch. 347, L. 1979.
50-5-103. Rules and standards — accreditation by joint commission.
50-5-104. Certain exemptions for spiritual healing institution.
50-5-105. Discrimination prohibited.
50-5-106. Records and reports required of health care facilities — confidentiality.
50-5-107. Unlawful use of word nursing.
50-5-108. Injunction.
50-5-109. Penalty.

Part 2 — Licensing

50-5-201. License requirements.
50-5-202. License fees.
50-5-203. Application for license.
50-5-204. Issuance and renewal of licenses.
50-5-205. Repealed. Sec. 27, Ch. 347, L. 1979.
50-5-206. Repealed. Sec. 27, Ch. 347, L. 1979.
50-5-207. Denial, suspension, or revocation of health care facility license — provisional license.
50-5-208. Hearing required.
50-5-209. Repealed. Sec. 27, Ch. 347, L. 1979.
Sections 50-5-210 through 50-5-220 reserved.
50-5-221. Civil penalty — injunction.
Sections 50-5-222 through 50-5-230 reserved.
50-5-231. Exemption from inspection — accredited hospital laboratories.

Part 3 — Certificate of Need

50-5-301. When application is required.
50-5-302. Application and review process.
50-5-303. Repealed. Sec. 27, Ch. 347, L. 1979.
50-5-304. Review criteria, required findings, and standards.
50-5-305. Period of validity of approved application.

50-5-306. Right to hearing and appeal.
50-5-307. Civil penalty — injunction.
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Part 4 — State Plan—Federal Aid

50-5-401. Repealed. Sec. 27, Ch. 347, L. 1979.
50-5-402. Administration of state medical facility plan.
50-5-403. State plan.
50-5-404. Duties of department.
50-5-405. Contracts with federal agencies.
50-5-406. Federal funds.
50-5-407. Publicity as to plans and hearing.
50-5-408. Applications for construction projects.
50-5-409. Hearing on denial of application.
50-5-410. Forwarding of application.
50-5-411. Consolidated applications.
50-5-412. Repealed. Sec. 27, Ch. 347, L. 1979.

Part 5 — Right to Refuse Participation in Sterilization

50-5-501. Definitions.
50-5-502. Refusal by hospital or health care facility to participate in sterilization.
50-5-503. Refusal by individual to participate in sterilization.
50-5-504. Unlawful to interfere with right of refusal.
50-5-505. Refusal not grounds for loss of privileges, immunities, or public benefits.

Part 1

General Provisions

50-5-101. Definitions. As used in parts 1 through 4 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Adult day-care center" means a facility, free-standing or connected to another health care facility, which provides adults, on an intermittent basis, with the care necessary to meet the needs of daily living.

(3) "Affected persons" means the applicant, members of the public who are to be served by the proposal, health care facilities located in the geographic area affected by the application, agencies which establish rates for health care facilities, and agencies which plan or assist in planning for such facilities, including any agency qualifying as a health systems agency pursuant to Title XV of the Public Health Service Act.

(4) "Ambulatory surgical facility" means a facility, not part of a hospital, which provides surgical treatment to patients not requiring hospitalization. This type of facility may include observation beds for patient recovery from surgery or other treatment.

(5) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

(6) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

(7) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological,

immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or assessment of a medical condition.

(8) "College of American pathologists" means the organization nationally recognized by that name with headquarters in Traverse City, Michigan, that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(9) "Construction" means the physical erection of a health care facility and any stage thereof, including ground breaking.

(10) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(11) "Federal acts" means federal statutes for the construction of health care facilities.

(12) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(13) "Health care facility" means any institution, building, or agency or portion thereof, private or public, excluding federal facilities, whether organized for profit or not, used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any person or persons. The term does not include offices of private physicians or dentists. The term includes but is not limited to ambulatory surgical facilities, health maintenance organizations, home health agencies, hospitals, infirmaries, kidney treatment centers, long-term care facilities, mental health centers, outpatient facilities, public health centers, rehabilitation facilities, and adult day-care centers.

(14) "Health maintenance organization" means a public or private organization organized as defined in 42 U.S.C. 300e, as amended.

(15) "Home health agency" means a public agency or private organization or subdivision thereof which is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(16) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick persons. Services provided may or may not include obstetrical care, emergency care, or any other service as allowed by state licensing authority. A hospital has an organized medical staff which is on call and available within 20 minutes, 24 hours per day, 7 days per week, and provides 24-hour nursing care by licensed registered nurses. This term includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular patients.

(17) "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmary—A" provides outpatient and inpatient care;

(b) an "infirmary—B" provides outpatient care only.

(18) "Joint commission on accreditation of hospitals" means the organization nationally recognized by that name with headquarters in Chicago, Illinois, that surveys health care facilities upon their requests and grants

accredidation status to any health care facility that it finds meets its standards and requirements.

(19) "Kidney treatment center" means a facility which specializes in treatment of kidney diseases, including freestanding hemodialysis units.

(20) (a) "Long-term care facility" means a facility or part thereof which provides skilled nursing care or intermediate nursing care to a total of two or more persons or personal care to more than three persons who are not related to the owner or administrator by blood or marriage, with these degrees of care defined as follows:

(i) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(ii) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(iii) "Personal care" means the provision of services and care which do not require nursing skills to residents needing some assistance in performing the activities of daily living.

(b) Hotels, motels, boarding homes, roominghouses, or similar accommodations providing for transients, students, or persons not requiring institutional health care are not long-term care facilities.

(21) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients or the rehabilitation of such persons, or any combination of these services.

(22) "New institutional health services" means:

(a) the construction, development, or other establishment of a health care facility which did not previously exist;

(b) any expenditure by or on behalf of a health care facility within a 12-month period in excess of $150,000, which, under generally accepted accounting principles consistently applied, is a capital expenditure. Whenever a health care facility or a person on behalf of a health care facility makes an acquisition under lease or comparable arrangement or through donation, which would have required review if the acquisition had been by purchase, such acquisition shall be considered a capital expenditure subject to review.

(c) a change in bed capacity of a health care facility which increases or decreases the total number of beds, redistributes beds among various service categories, or relocates such beds from one physical facility or site to another over a 2-year period by more than 10 beds or 10% of the total licensed bed capacity, whichever is less;

(d) health services which are offered in or through a health care facility and which were not offered on a regular basis in or through such health care facility within the 12-month period prior to the time such services would be offered or the deletion by a health care facility of a service previously offered;

(e) the expansion of a geographic service area of a home health agency.

(23) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

(24) "Observation bed" means a bed occupied for not more than 6 hours by a patient recovering from surgery or other treatment.

(25) "Offer" means the holding out by a health care facility that it can provide specific health services.

(26) "Outpatient facility" means a facility, located in or apart from a hospital, providing, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients in need of medical, surgical, or mental care. An outpatient facility may have observation beds.

(27) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

(28) "Person" means any individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

(29) "Public health center" means a publicly owned facility providing health services, including laboratories, clinics, and administrative offices.

(30) "Rehabilitation facility" means a facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

(31) "Resident" means a person who is in a long-term care facility for intermediate or personal care.

(32) "State plan" means the state medical facility plan provided for in part 4.

History: Ap. p. Sec. 2, Ch. 197, L. 1967; amd. Sec. 28, Ch. 349, L. 1974; Sec. 69-4102, R.C.M. 1947; Ap. p. Sec. 159, Ch. 197, L. 1967; amd. Sec. 1, Ch. 290, L. 1969; amd. Sec. 1, Ch. 197, L. 1971; amd. Sec. 1, Ch. 448, L. 1973; amd. Sec. 1, Ch. 150, L. 1974; amd. Sec. 1, Ch. 447, L. 1975; amd. Sec. 22, Ch. 187, L. 1977; R.C.M. 1947, 69-4102(1), 69-5201; amd. Sec. 1, Ch. 347, L. 1979; amd. Sec. 1, Ch. 432, L. 1981; amd. Sec. 1, Ch. 433, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 432 added definitions of "accreditation" and "joint commission on accreditation of hospitals".

Chapter 433 added definitions of "accreditation", "clincal laboratory", and "college of American pathologists".

Both chapters added an identical definition of "accreditation".

50-5-102. Repealed. Sec. 27, Ch. 347, L. 1979.

History: En. Sec. 160, Ch. 197, L. 1967; R.C.M. 1947, 69-5202.

50-5-103. Rules and standards — accreditation by joint commission. (1) The department shall promulgate and adopt rules and minimum standards for implementation of parts 1 through 4.

(2) Any facility covered by this chapter shall comply with the state and federal requirements relating to construction, equipment, and fire and life safety.

(3) The department shall extend a reasonable time for compliance with rules for parts 1 through 4 after adoption.

(4) Any hospital that furnishes written evidence, including the recommendation for future compliance statements to the department of its accreditation granted by the joint commission on accreditation of hospitals, is eligible for licensure in the state for the accreditation period and may not be subjected to an inspection by the department, except that the department may inspect any licensed health care facility to answer specific complaints

made in writing by any person against the facility when such complaints pertain to licensing requirements. Inspection by the department upon such complaint shall be limited to the specific area or condition of the health care facility to which the complaint pertains.

History: En. Sec. 171, Ch. 197, L. 1967; amd. Sec. 22, Ch. 366, L. 1969; amd. Sec. 3, Ch. 448, L. 1973; amd. Sec. 74, Ch. 349, L. 1974; R.C.M. 1947, 69-5213; amd. Sec. 2, Ch. 347, L. 1979; amd. Sec. 2, Ch. 432, L. 1981.

Compiler's Comments

1981 Amendment: Added subsection (4).

50-5-104. Certain exemptions for spiritual healing institution. Parts 1 through 3 and rules and standards adopted by the department may not authorize the supervision, regulation, or control of care or treatment of persons in any home or institution conducted for those who rely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well-recognized church or religious denomination. However, a license is required and the minimum standards referred to in 50-5-103(2) apply.

History: En. Sec. 175, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5217(2); amd. Sec. 3, Ch. 347, L. 1979.

50-5-105. Discrimination prohibited. (1) All phases of the operation of a health care facility shall be without discrimination against anyone on the basis of race, creed, religion, color, national origin, sex, age, marital status, physical or mental handicap, or political ideas.

(2) No person who operates a facility may discriminate among the patients of licensed physicians. The free and confidential professional relationship between a licensed physician and patient shall continue and remain unaffected.

History: En. Sec. 175, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5217(1); amd. Sec. 4, Ch. 347, L. 1979.

50-5-106. Records and reports required of health care facilities — confidentiality. Health care facilities shall keep records and make reports as required by the department. Before February 1 of each year, every licensed health care facility shall submit an annual report for the preceding calendar year to the department. The report shall be on forms and contain information specified by the department. Information received by the department or board through reports, inspections, or provisions of parts 1 and 2 may not be disclosed in a way which would identify patients. A department employee who discloses information which would identify a patient shall be dismissed from employment and subject to the provision of 45-7-401, unless the disclosure was authorized in writing by the patient, his guardian, or his agent. Information and statistical reports from health care facilities which are considered necessary by the department for health planning and resource development activities will be made available to the public and the health planning agencies within the state. Applications by health care facilities for certificates of need and any information relevant to review of these applications, pursuant to part 3, shall be accessible to the public.

History: En. Sec. 176, Ch. 197, L. 1967; R.C.M. 1947, 69-5218; amd. Sec. 5, Ch. 347, L. 1979.

50-5-107. Unlawful use of word nursing. It is unlawful for any facility operating in this state to use the word "nursing" in its name, signs, advertising, etc., unless that facility does in fact provide 24-hour nursing care by licensed nurses.

History: En. 69-5203.1 by Sec. 2, Ch. 448, L. 1973; R.C.M. 1947, 69-5203.1.

50-5-108. Injunction. The department, on advice of the attorney general, may bring an action for injunction or other process against any person to restrain or prevent the establishment, conduct, management, or operation of a facility which is in violation of any provision of parts 1 or 4 of this chapter.

History: En. Sec. 178, Ch. 197, L. 1967; amd. Sec. 75, Ch. 349, L. 1974; R.C.M. 1947, 69-5220; amd. Sec. 6, Ch. 347, L. 1979.

50-5-109. Penalty. A person who violates provisions of parts 1 or 4 is guilty of a misdemeanor. On conviction he shall be fined not more than $100 for the first offense and not more than $300 for each subsequent offense.

History: En. Sec. 179, Ch. 197, L. 1967; R.C.M. 1947, 69-5221; amd. Sec. 7, Ch. 347, L. 1979.

Part 2

Licensing

50-5-201. License requirements. (1) A licensee who contemplates construction of or alteration or addition to a health care facility shall submit plans and specifications to the department for preliminary inspection and approval prior to commencing construction.

(2) No person may operate a health care facility unless the facility is licensed by the department. Licenses shall be for 1 year unless issued for a shorter period. A license is valid only for the person and premises for which it was issued. A license may not be sold, assigned, or transferred.

(3) Upon discontinuance of the operation or upon transfer of ownership of a facility, the license must be returned to the department.

(4) Licenses shall be displayed in a conspicuous place near the admitting office of the facility.

History: En. Sec. 161, Ch. 197, L. 1967; amd. Sec. 105, Ch. 349, L. 1974; R.C.M. 1947, 69-5203; amd. Sec. 2, Ch. 37, L. 1979; amd. Sec. 8, Ch. 347, L. 1979.

50-5-202. License fees. The department shall collect fees for each license issued for deposit in the state general fund as follows:

(1) facilities with 20 beds or less—$20;

(2) facilities with 21 beds or more—$1 per bed.

History: En. Sec. 162, Ch. 197, L. 1967; amd. Sec. 1, Ch. 282, L. 1975; R.C.M. 1947, 69-5204.

50-5-203. Application for license. The procedure to apply for a license is as follows:

(1) At least 30 days prior to the opening of a facility and annually thereafter, application is made to the department accompanied by the license fee.

(2) The application shall contain:

(a) the name and address of the applicant if an individual, the name and address of each member if a firm, partnership, or association, or the name and address of each officer if a corporation;

(b) the location of the facility;

(c) the name of the person or persons who will manage or supervise the facility;

(d) the number and type of patients or residents for which care is provided;

(e) any information which the department may require pertaining to the number, experience, and training of employees;

(f) information on ownership, contract, or lease agreement if operated by a person other than the owner.

History: En. Sec. 163, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; amd. Sec. 2, Ch. 282, L. 1975; R.C.M. 1947, 69-5205.

`50-5-204 amend. spec. sess. SEE: v. 1, MCA Ann`

50-5-204. Issuance and renewal of licenses. (1) On receipt of a new or renewal application, the department or its authorized agent shall inspect the facility. If minimum standards are met and the proposed staff is qualified, the department shall issue a license for 1 year. If minimum standards are not met, the department may issue a provisional license for less than 1 year if operation will not result in undue hazard to patients or residents or if the demand for accommodations offered is not met in the community. The minimum standards which home health agencies must meet in order to be licensed shall be as outlined in 42 U.S.C. 1395 x(o), as amended, and in rules implementing it which add minimum standards.

(2) Licensed premises shall be open to inspection, and access to all records shall be granted at all reasonable times.

History: En. Sec. 164, Ch. 197, L. 1967; R.C.M. 1947, 69-5206; amd. Sec. 9, Ch. 347, L. 1979.

50-5-205. Repealed. Sec. 27, Ch. 347, L. 1979.

History: En. Sec. 165, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; amd. Sec. 23, Ch. 187, L. 1977; R.C.M. 1947, 69-5207.

50-5-206. Repealed. Sec. 27, Ch. 347, L. 1979.

History: En. Sec. 166, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5208.

50-5-207. Denial, suspension, or revocation of health care facility license — provisional license. (1) The department may deny, suspend, or revoke a health care facility license if any of the following circumstances exist:

(a) The facility fails to meet the minimum standards pertaining to it prescribed under 50-5-103.

(b) The staff is insufficient in number or unqualified by lack of training or experience.

(c) The applicant or any person managing it has been convicted of a felony and denial of a license on that basis is consistent with 37-1-203 or the applicant otherwise shows evidence of character traits inimical to the health and safety of patients or residents.

(d) The applicant does not have the financial ability to operate the facility in accordance with law or rules or standards adopted by the department.

(e) There is cruelty or indifference affecting the welfare of the patients or residents.

(f) There is misappropriation of the property or funds of a patient or resident.

(g) There is conversion of the property of a patient or resident without his consent.

(h) Any provision of parts 1 through 3 is violated.

(2) The department may reduce a license to provisional status if as a result of an inspection it is determined minimum standards are not being met.

(3) The denial, suspension, or revocation of a health care facility license is not subject to the certificate of need requirements of part 3.

History: **En. Sec. 167, Ch. 197, L. 1967; R.C.M. 1947, 69-5209; amd. Sec. 10, Ch. 347, L. 1979.**

50-5-208. Hearing required. (1) A license may not be denied, suspended, or revoked without notice and an opportunity for a hearing before the board.

(2) Notice shall be given the applicant or licensee of a date, not less than 15 days after mailing or service, for a hearing before the board.

(3) The decision of the board is final 30 days after it is mailed or served unless the applicant or licensee commences an action in the district court to appeal the decision. An appeal shall be in the district court where the facility is located or will be located.

History: **En. Sec. 168, Ch. 197, L. 1967; amd. Sec. 73, Ch. 349, L. 1974; R.C.M. 1947, 69-5210.**

50-5-209. Repealed. Sec. 27, Ch. 347, L. 1979.

History: **En. Sec. 177, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5219.**

50-5-210 through 50-5-220 reserved.

50-5-221. Civil penalty — injunction. (1) A person who violates the terms of this part is subject to a civil penalty not to exceed $1,000. Each day of violation constitutes a separate violation. The department or, upon request of the department, the county attorney of the county where the health care facility in question is located may petition the district court to impose, assess, and recover the civil penalty. Money collected as a civil penalty shall be deposited in the state general fund.

(2) The department or, upon request of the department, the county attorney of the county where the health care facility in question is located may bring an action to enjoin a violation of any provision of this part, in addition to or exclusive of the remedy in subsection (1).

History: **En. Sec. 11, Ch. 347, L. 1979.**

50-5-222 through 50-5-230 reserved.

50-5-231. Exemption from inspection — accredited hospital laboratories. (1) Any clinical laboratory that furnishes written evidence to the department of its accreditation by the college of American pathologists is exempt from inspection by the department during the period of accreditation.

(2) Subsection (1) applies only to those clinical laboratories operated by a hospital licensed by Montana.

History: **En. Secs. 2, 3, Ch. 433, L. 1981.**

Compiler's Comments

Codification Instruction: Section 4, Ch. 433, L. 1981, provided: "Section 2 is intended to be codified as an integral part of Title 50, chapter 5, part 2, and the provisions of 50-5-101 apply to section 2."

Part 3

Certificate of Need

50-5-301. When application is required. Unless an application has been submitted to and a certificate of need granted by the department, no person may initiate any of the following:

(1) a new institutional health service as defined in 50-5-101;

(2) any expenditure by or on behalf of a health care facility in excess of $150,000 made in preparation for the offering or development of a new institutional health service and any arrangement or commitment made for financing the offering or development of the new institutional health service. Expenditures made in the preparation for the offering of a new institutional health service shall include expenditures for architectural designs, preliminary plans, working drawings, specifications, studies, and surveys.

History: En. Sec. 170, Ch. 197, L. 1967; amd. Sec. 21, Ch. 366, L. 1969; amd. Sec. 2, Ch. 447, L. 1975; R.C.M. 1947, 69-5212(1); amd. Sec. 3, Ch. 37, L. 1979; amd. Sec. 12, Ch. 347, L. 1979.

50-5-302. Application and review process. (1) Any person intending to initiate an activity for which a certificate of need is required shall submit a letter of intent to the department. After receipt, the department shall send the applicant a form requiring the submission of information considered necessary by the department to determine if the proposed activity meets the standards in 50-5-304. The form and content of the notification of intent and applications for certificates of need shall be prescribed by rule by the department.

(2) Within 15 calendar days after receipt of the application, the department shall determine whether it contains sufficient information to determine if the proposed activity meets the standards in 50-5-304. If the application is found incomplete, the department shall request additional information.

(3) After the application has been designated complete, notification must be sent to the applicant and all other affected persons regarding the department's projected review of the application and the review period time schedule. The review period for the application may be no longer than 90 calendar days after the notice is sent unless a longer period is agreed to by the applicant. During the review period a public hearing may be held if requested by one or more affected persons.

(4) The department shall, after considering all comments received during the review period, issue a certificate of need, with or without conditions, or reject the application. The department shall notify the applicant and affected persons of its decision.

History: En. Sec. 170, Ch. 197, L. 1967; amd. Sec. 21, Ch. 366, L. 1969; amd. Sec. 2, Ch. 447, L. 1975; R.C.M. 1947, 69-5212(part); amd. Sec. 13, Ch. 347, L. 1979.

50-5-303. Repealed. Sec. 27, Ch. 347, L. 1979.

History: En. Sec. 170, Ch. 197, L. 1967; amd. Sec. 21, Ch. 366, L. 1969; amd. Sec. 2, Ch. 447, L. 1975; R.C.M. 1947, 69-5212(part).

50-5-304. Review criteria, required findings, and standards. The department shall by rule promulgate and utilize, as appropriate, specific criteria for reviewing certificate of need applications under this chapter, including but not limited to the following considerations and required findings:

(1) the relationship of the health services being reviewed to the applicable health systems plan and annual implementation plan developed pursuant to Title XV of the Public Health Service Act, as amended;

(2) the relationship of services reviewed to the long-range development plan, if any, of the person providing or proposing the services;

(3) the need that the population served or to be served by the services has for the services;

(4) the availability of less costly quality equivalent or more effective alternative methods of providing such services;

(5) the immediate and long-term financial feasibility of the proposal as well as the probable impact of the proposal on the costs of and charges for providing health services by the person proposing the health service;

(6) the relationship and financial impact of the services proposed to be provided to the existing health care system of the area in which such services are proposed to be provided;

(7) the availability of resources, including health manpower, management personnel, and funds for capital and operating needs for the provision of services proposed to be provided and the availability of alternative uses of such resources for the provision of other health services;

(8) the relationship, including the organizational relationship, of the health services proposed to be provided to ancillary or support services;

(9) the special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the health service areas in which the entities are located or in adjacent health service areas. Such entities may include medical and other health profession schools, multidisciplinary clinics, and specialty centers.

(10) the special needs and circumstances of health maintenance organizations for which assistance may be provided under Title XIII of the Public Health Service Act. Such needs and circumstances include the needs of and costs to members and projected members of the health maintenance organization in obtaining health services and the potential for a reduction in the use of inpatient care in the community through an extension of preventive health services and the provision of more systematic and comprehensive health services.

(11) the special needs and circumstances of biomedical and behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages;

(12) in the case of a construction project, the costs and methods of the proposed construction, including the costs and methods of energy provision, and the probable impact of the construction project reviewed on the costs of providing health services by the person proposing the construction project;

(13) the distance, convenience, cost of transportation, and accessibility of health services for persons who live outside urban areas in relation to the proposal; and

(14) any other criteria, required findings, or requirements for reviewing certificate of need applications cited in the federal regulations found in Title 42, CFR, Part 123, as amended.

History: En. Sec. 170, Ch. 197, L. 1967; amd. Sec. 21, Ch. 366, L. 1969; amd. Sec. 2, Ch. 447, L. 1975; R.C.M. 1947, 69-5212(3), (4); amd. Sec. 14, Ch. 347, L. 1979.

50-5-305. Period of validity of approved application. A certificate of need shall terminate 1 year after the date of issuance unless:

(1) the applicant has commenced construction if the project provides for construction or has incurred an enforceable capital expenditure commitment for projects not involving construction; or

(2) the certificate of need validity period is extended by the department for one additional period of 6 months, upon showing good cause by the applicant for the extension.

History: En. Sec. 170, Ch. 197, L. 1967; amd. Sec. 21, Ch. 366, L. 1969; amd. Sec. 2, Ch. 447, L. 1975; R.C.M. 1947, 69-5212(5); amd. Sec. 15, Ch. 347, L. 1979.

50-5-306. Right to hearing and appeal. (1) The applicant or a health systems agency designated pursuant to Title XV of the Public Health Service Act may request and shall be granted a public hearing before the department to reconsider its decision, if the request is received by the department within 30 calendar days after the decision is announced. Any other affected person may, for good cause, request the department to reconsider its decision at such a hearing. The department shall grant the request if the affected person submits the request in writing showing good cause as defined in rules adopted by the department and if the request is received by the department within 30 calendar days after the decision is announced. The public hearing to reconsider shall be held, if warranted or required, within 30 calendar days after its request. The department shall make its final decision and written findings of fact and conclusions of law in support thereof within 45 days after the conclusion of the reconsideration hearing. The hearing shall be conducted in accordance with 2-4-601 through 2-4-623.

(2) An aggrieved applicant or a health systems agency designated pursuant to Title XV of the Public Health Service Act may appeal the department's final decision to the board by filing a written notice of appeal stating the specific findings of fact and conclusions of law being appealed and the grounds. The notice of appeal must be received by the board within 30 calendar days after formal notice of the department's final decision was issued. The board shall give public notice of the appeal within 10 days, and the hearing shall be held within 30 days after receipt of the notice of appeal.

(3) The scope of the hearing before the board is limited to a review of the record upon which the department made its decision. The board, upon request of any party to an appeal before the board, shall hear oral arguments and receive written briefs. Within 45 calendar days after the conclusion of the public hearing, the board shall make and issue its decision, supported by written findings of fact and conclusions of law. The board may affirm the department's decision or remand it for further proceedings. The board may reverse or modify the department's decision if the appellant's rights have been prejudiced for any of the reasons found in 2-4-704.

(4) The final decision of the board shall be considered the decision of the department for purposes of an appeal to district court. Any affected person may appeal this decision to the district court as provided in Title 2, chapter 4, part 7.

(5) The department may by rule prescribe in greater detail the hearing and appellate procedures.

History: En. Sec. 170, Ch. 197, L. 1967; amd. Sec. 21, Ch. 366, L. 1969; amd. Sec. 2, Ch. 447, L. 1975; R.C.M. 1947, 69-5212(6); amd. Sec. 16, Ch. 347, L. 1979.

50-5-307. Civil penalty — injunction. (1) A person who violates the terms of 50-5-301 is subject to a civil penalty of not less than $1,000 or more than $10,000. Each day of violation constitutes a separate offense. The department or, upon request of the department, the county attorney of the county where the health care facility in question is located may petition the district court to impose, assess, and recover the civil penalty. Money collected as a civil penalty shall be deposited in the state general fund.

(2) The department or, upon request of the department, the county attorney of the county where the health care facility in question is located may bring an action to enjoin a violation of 50-5-301, in addition to or exclusive of the remedy in subsection (1).

History: En. Sec. 170, Ch. 197, L. 1967; amd. Sec. 21, Ch. 366, L. 1969; amd. Sec. 2, Ch. 447, L. 1975; R.C.M. 1947, 69-5212(part); amd. Sec. 17, Ch. 347, L. 1979.

50-5-308. Special circumstances. In the event of destruction of any part of a health care facility as a result of fire, storm, civil disturbance, or any act of God, the department may issue a certificate of need for only the replacement of the previously existing facility or portion thereof.

History: En. Sec. 18, Ch. 347, L. 1979.

Part 4

State Plan — Federal Aid

50-5-401. Repealed. Sec. 27, Ch. 347, L. 1979.

History: (1)En. Sec. 2, Ch. 197, L. 1967; amd. Sec. 28, Ch. 349, L. 1974; Sec. 69-4102, R.C.M. 1947; (2) thru (7)En. Sec. 180, Ch. 197, L. 1967; amd. Sec. 76, Ch. 349, L. 1974; Sec. 69-5301, R.C.M. 1947; R.C.M. 1947, 69-4102(2), 69-5301.

50-5-402. Administration of state medical facility plan. The department is the principal state agency for establishing and administering a statewide plan for construction, modernization, alteration, equipment, maintenance, or operation of a health care facility for provision of care, treatment, diagnosis, rehabilitation, training, or related service. This plan is to be known as the state medical facility plan.

History: En. Sec. 181, Ch. 197, L. 1967; amd. Sec. 77, Ch. 349, L. 1974; R.C.M. 1947, 69-5302(part); amd. Sec. 19, Ch. 347, L. 1979.

50-5-403. State plan. The state plan shall specify relative need for the projects included in the construction program in accordance with regulations prescribed under federal acts and provide for the construction, maintenance, and operation in the order of relative need determined by the department.

History: En. Sec. 187, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5308.

50-5-404. Duties of department. The department shall:

(1) prescribe minimum standards for the maintenance and operation of health care facilities receiving federal aid for construction under the state plan;

(2) inventory existing hospital, medical, and related health care facilities;

(3) survey the need for construction or alteration of health care facilities;

(4) develop and administer a state plan for the construction and alteration of public and other nonprofit health care facilities;

(5) if desirable, enter into agreements for the utilization of facilities and services of other departments, agencies, and institutions, public or private;

(6) accept and deposit with the state treasurer and spend any grant made to meet costs of carrying out this part;

(7) prepare and review a construction program in accordance with federal requirements that will provide adequate health care facilities to people in the state providing, as far as possible, for distribution throughout the state to make all types of services reasonably available to all persons;

(8) submit to federal agencies state plans, including those for the health care facilities construction program and modifications of it providing for the establishment and operation of health care facilities construction activities in accordance with federal requirements;

(9) make application to the appropriate federal agency for funds to assist in carrying out the survey and planning activities;

(10) after approval of a plan by the appropriate federal agency, publish a description in newspapers having general circulation throughout the state and make the plan available upon request to all persons or organizations;

(11) inspect construction or alteration projects approved by the appropriate federal agency and, if satisfactory, certify that work has been performed on the project or purchases made in accordance with approved plans and specifications and that payment of federal funds is due to the applicant;

(12) require reports and make inspections and investigations as necessary or required by the federal agency;

(13) contract with consultants for services which are performed on a part-time or fee-for-service basis not involving administrative duties.

History: En. Secs. 182, 183, 184, 186, Ch. 197, L. 1967; amd. Secs. 78, 79, 80, 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5303, 69-5304, 69-5305(part), 69-5307; amd. Sec. 20, Ch. 347, L. 1979.

50-5-405. Contracts with federal agencies. The department may enter into contracts and agreements with agencies of the federal government to secure the benefit of federal programs to provide adequate health care facilities and services.

History: En. Sec. 181, Ch. 197, L. 1967; amd. Sec. 77, Ch. 349, L. 1974; R.C.M. 1947, 69-5302(part); amd. Sec. 21, Ch. 347, L. 1979.

50-5-406. Federal funds. (1) The department may accept federal funds.

(2) All federal funds received shall be deposited in the state treasury and used only for the purposes specified by law. Money which is not spent for those purposes shall be repaid to the federal government.

(3) The department shall transmit federal funds to applicants for work performed or purchases made in carrying out approved projects. Claims for all payments shall be approved by the department.

History: En. Secs. 184, 190, Ch. 197, L. 1967; amd. Secs. 79, 107, 111, Ch. 349, L. 1974; R.C.M. 1947, 69-5305(part), 69-5311.

50-5-407. Publicity as to plans and hearing. Before submitting plans to a federal agency, the department shall give adequate publicity including a general description of the plans and may hold a public hearing at which all persons or organizations may express their views.

History: En. Sec. 185, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5306.

50-5-408. Applications for construction projects. Applications for health care facilities construction projects may be submitted by a state agency, a political subdivision, or by any public or nonprofit agency authorized to construct and operate a health care facility.

History: En. Sec. 188, Ch. 197, L. 1967; R.C.M. 1947, 69-5309; amd. Sec. 22, Ch. 347, L. 1979.

50-5-409. Hearing on denial of application. If an application is denied, the applicant shall have an opportunity for a fair hearing.

History: En. Sec. 189, Ch. 197, L. 1967; amd. Secs. 107 and 111, Ch. 349, L. 1974; R.C.M. 1947, 69-5310(part).

50-5-410. Forwarding of application. If the department, after affording reasonable opportunity for development and presentation of applications in the order of relative need, finds that an application complies with state and federal requirements and conforms to the state plan, the department shall forward the application to the appropriate federal agency.

History: En. Sec. 189, Ch. 197, L. 1967; amd. Secs. 107 and 111, Ch. 349, L. 1974; R.C.M. 1947, 69-5310(part).

50-5-411. Consolidated applications. (1) Boards of county commissioners of two or more counties may submit a consolidated application for a single health care facility or health center serving each of the counties included in the application.

(2) Any statutes investing counties with powers to construct, maintain, and operate health care facilities directly or by lease or contract may be utilized for this joint action.

(3) All statutes governing submission of questions of establishing a health care facility, health care facility construction, issuance of bonds, or method of operation and requiring a majority vote of taxpayers on the questions shall apply.

(4) Concurrent and joint action of two or more counties and approval by a majority of the voters in each county is required to authorize the issuance of bonds, construction, and contracts under a consolidated plan.

History: En. Sec. 191, Ch. 197, L. 1967; R.C.M. 1947, 69-5312; amd. Sec. 23, Ch. 347, L. 1979.

50-5-412. Repealed. Sec. 27, Ch. 347, L. 1979.

History: En. Sec. 192, Ch. 197, L. 1967; R.C.M. 1947, 69-5313.

Part 5

Right to Refuse Participation in Sterilization

50-5-501. Definitions. As used in this part:

(1) "sterilization" means the performance of, assistance or participation in the performance of, or submission to an act or operation intended to eliminate an individual's reproductive capacity;

(2) "person" includes one or more individuals, partnerships, associations, and corporations.

History: En. 69-5222 by Sec. 1, Ch. 247, L. 1974; R.C.M. 1947, 69-5222.

50-5-502. Refusal by hospital or health care facility to participate in sterilization. (1) No private hospital or health care facility shall be required, contrary to the religious or moral tenets or the stated religious beliefs or moral convictions of such hospital or facility as stated by its governing body or board, to admit any person for the purpose of sterilization or to permit the use of its facilities for such purpose.

(2) Such refusal shall not give rise to liability of such hospital or health care facility or any personnel or agent or governing board thereof to any person for damages allegedly arising from such refusal or be the basis for any discriminatory, disciplinary, or other recriminatory action against such hospital or health care facility or any personnel, agent, or governing board thereof.

History: **En. 69-5223 by Sec. 2, Ch. 247, L. 1974; R.C.M. 1947, 69-5223(1).**

50-5-503. Refusal by individual to participate in sterilization. (1) All persons shall have the right to refuse to advise concerning, perform, assist, or participate in sterilization because of religious beliefs or moral convictions.

(2) If requested by any hospital or health care facility or person desiring sterilization, such refusal shall be in writing signed by the person refusing but may refer generally to the grounds of "religious beliefs and moral convictions".

(3) The refusal of any person to advise concerning, perform, assist, or participate in sterilization shall not be a consideration in respect of staff privileges of any hospital or health care facility or a basis for any discriminatory, disciplinary, or other recriminatory action against such person, nor shall such person be liable to any person for damages allegedly arising from refusal.

History: **En. 69-5223 by Sec. 2, Ch. 247, L. 1974; R.C.M. 1947, 69-5223(2).**

50-5-504. Unlawful to interfere with right of refusal. (1) It shall be unlawful to interfere or attempt to interfere with the right of refusal authorized by this part, whether by duress, coercion, or any other means.

(2) The person injured thereby shall be entitled to injunctive relief, when appropriate, and shall further be entitled to monetary damages for injuries suffered.

History: **En. 69-5223 by Sec. 2, Ch. 247, L. 1974; R.C.M. 1947, 69-5223(3).**

50-5-505. Refusal not grounds for loss of privileges, immunities, or public benefits. Such refusal by any hospital or health care facility or person shall not be grounds for loss of any privileges or immunities to which the granting of consent may otherwise be a condition precedent or for the loss of any public benefits.

History: **En. 69-5223 by Sec. 2, Ch. 247, L. 1974; R.C.M. 1947, 69-5223(4).**

CHAPTER 6

EMERGENCY MEDICAL SERVICES

Part 1 — Development of Program

Section
50-6-101. Legislative purpose.
50-6-102. Department to establish and administer program.

50-6-103. Powers of department.
50-6-104. Interdepartmental cooperation required.

Part 2 — Emergency Medical Technicians

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Part 1

Development of Program

50-6-101. Legislative purpose. The public welfare requires the providing of assistance and encouragement for the development of a comprehensive emergency medical services program for Montanans who each year are dying and suffering permanent disabilities needlessly because of inadequate emergency medical services. The repeated loss of persons who die unnecessarily because necessary life-support personnel and equipment are not available to victims of accidents and sudden illness is a tragedy that can and must be eliminated. The development of an emergency medical services program is in the interest of the social well-being and health and safety of the state and all its people.

History: **En. 69-7001 by Sec. 1, Ch. 311, L. 1974; R.C.M. 1947, 69-7001.**

50-6-102. Department to establish and administer program. The department of health and environmental sciences shall establish and administer an emergency medical services program.

History: **En. 69-7002 by Sec. 2, Ch. 311, L. 1974; amd. Sec. 38, Ch. 213, L. 1975; R.C.M. 1947, 69-7002(part).**

50-6-103. Powers of department. (1) The department of health and environmental sciences is authorized to confer and cooperate with any and all other persons, organizations, and governmental agencies that have an interest in emergency medical services problems and needs.

(2) The department is authorized to accept, receive, expend, and administer any and all funds which are now available or which may be donated, granted, or appropriated to the department.

History: En. 69-7002 by Sec. 2, Ch. 311, L. 1974; amd. Sec. 38, Ch. 213, L. 1975; R.C.M. 1947, 69-7002(part).

50-6-104. Interdepartmental cooperation required. The department of health and environmental sciences, the department of justice, and other interested departments or divisions shall develop in writing a mutually agreeable plan of cooperation so that governmental effort will not be duplicated and governmental resources will be applied on a reasonable priority basis.

History: En. 69-7002 by Sec. 2, Ch. 311, L. 1974; amd. Sec. 38, Ch. 213, L. 1975; R.C.M. 1947, 69-7002(part); amd. Sec. 8, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of justice" for "department of community affairs, highway safety division".

Part 2

Emergency Medical Technicians

50-6-201. Legislative findings. The legislature finds and declares that prompt and efficient emergency medical care of the sick and injured at the scene and during transport to a health care facility is an important ingredient necessary for reduction of the mortality and morbidity rate during the first critical minutes immediately after an accident or the onset of an emergent condition and that a program for emergency medical technicians is required in order to provide the safest and most efficient delivery of emergency care.

History: En. 69-7003 by Sec. 1, Ch. 84, L. 1975; R.C.M. 1947, 69-7003.

50-6-202. Definitions. As used in this part, the following definitions apply:

(1) "Emergency medical technician—basic" means personnel of volunteer or nonvolunteer police, fire, rescue, ambulance, or emergency services who have been specially trained in emergency care in a training program approved by the state board of medical examiners and certified by said board as having demonstrated a level of competence suitable to treat victims of injury or other emergent condition.

(2) "Emergency medical technician—advanced" means personnel of volunteer or nonvolunteer police, fire, rescue, ambulance, or emergency services who have been specially trained in an advanced emergency medical technician training program approved by the state board of medical examiners and certified by the board as having demonstrated an advanced level of competence suitable to treat victims of severe injury or other serious emergent condition.

(3) "Board" means the board of medical examiners, department of commerce.

History: En. 69-7004 by Sec. 2, Ch. 84, L. 1975; R.C.M. 1947, 69-7004; amd. Sec. 3, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (3).

50-6-203. Rules. The board, after consultation with the department of health and environmental sciences, the department of justice, and other appropriate departments, associations, and organizations, shall adopt rules of the board implementing this part, including but not limited to training and certification of personnel, administration of drugs, and other acts as allowed herein.

History: En. 69-7008 by Sec. 6, Ch. 84, L. 1975; R.C.M. 1947, 69-7008; amd. Sec. 8, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of justice" for "department of community affairs".

50-6-204. Emergency medical technician — basic. An emergency medical technician—basic may perform any of the following:

(1) render emergency care, rescue, and resuscitation services;

(2) provide emergency transportation;

(3) perform cardiopulmonary resuscitation in the pulseless, nonbreathing patient; and

(4) such other acts as the board may allow by rule.

History: En. 69-7005 by Sec. 3, Ch. 84, L. 1975; R.C.M. 1947, 69-7005.

50-6-205. Emergency medical technician — advanced. (1) An emergency medical technician—advanced may perform any of the following:

(a) render emergency care, rescue, and resuscitation services;

(b) while caring for patients during training at a hospital, ambulance, or other medical facility, administer parenteral medications under the direct supervision of a physician or a registered nurse;

(c) perform cardiopulmonary resuscitation and defibrillation in a pulseless, nonbreathing patient; and

(d) such other acts as the board may allow by rule.

(2) When an emergency medical technician—advanced has voice contact with a physician and upon the physician's order or is functioning under formally adopted written standing orders of a local hospital medical staff, the following acts may be performed based upon such direct or indirect order:

(a) administer intravenous saline or glucose solutions;

(b) perform gastric or tracheal suction by intubation;

(c) administer parenteral injections of drugs approved by the board; and

(d) such other acts as the board may allow by rule.

History: En. 69-7006, 69-7007 by Secs. 4, 5, Ch. 84, L. 1975; R.C.M. 1947, 69-7006, 69-7007.

50-6-206. Consent. No emergency medical technician may be subject to civil liability for failure to obtain consent in performing acts as authorized herein to any individual regardless of age where the patient is unable to give consent and there is no other person present legally authorized to consent, provided that such acts are in good faith and without knowledge of facts negating consent.

History: **En. 69-7009 by Sec. 7, Ch. 84, L. 1975; R.C.M. 1947, 69-7009.**

50-6-207. Construction. Nothing in this part shall be construed to detract from the powers granted to the department of health and environmental sciences to regulate ambulance service as provided for in part 3 of this chapter.

History: **En. 69-7010 by Sec. 8, Ch. 84, L. 1975; R.C.M. 1947, 69-7010.**

Part 3

Ambulance Service Licensing

50-6-301. Findings and purposes. The public welfare requires the establishment of minimum uniform standards for the operation of ambulance services, as defined in 50-6-302, and the control, inspection, and regulation of persons engaged therein in order to prevent or eliminate improper care that may endanger the health of the public. The regulation of establishments providing such service is in the interest of social well-being and the health and safety of the state and all its people.

History: **En. Sec. 1, Ch. 387, L. 1971; R.C.M. 1947, 69-3604.**

50-6-302. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Ambulance" means a privately or publicly owned motor vehicle that is especially designed, constructed, and equipped which is maintained and used for the transportation of patients, including dual purpose police patrol cars and funeral coaches or hearses which otherwise comply with this part, but does not include a motor vehicle owned by or operated under the direct control of the United States or this state.

(2) "Ambulance service" means a person who operates an ambulance.

(3) "Attendant" means a trained or otherwise qualified individual responsible for the operation of an ambulance and the care of the patients whether or not the attendant also serves as driver.

(4) "Attendant-driver" means a person who is qualified as an attendant and a driver.

(5) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

(6) "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

(7) "Driver" means an individual who drives an ambulance.

(8) "Dual purpose police patrol car" means a vehicle operated by a police department which is equipped as an ambulance, even though it is also used for patrol or other police purposes.

(9) "Patient" means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless. The term does not include a person who is nonambulatory and who needs transportation assistance solely because that person is confined to a wheelchair as his usual means of mobility.

(10) "Person" means an individual, firm, partnership, association, corporation, company, group of individuals acting together for a common purpose, or organization of any kind, including a governmental agency other than the United States or this state.

History: En. Sec. 2, Ch. 387, L. 1971; amd. Sec. 11, Ch. 349, L. 1974; amd. Sec. 1, Ch. 86, L. 1977; R.C.M. 1947, 69-3605.

50-6-303. Rules. (1) The department shall prescribe and enforce rules which are necessary to carry out the provisions of this part.

(2) These rules shall relate to ambulance equipment, training, operations (records), personnel, cleanliness, and insurance.

(3) No rules shall be effective until a public hearing has been held for review of the rules.

(4) Notice of the public hearing shall be sent by ordinary mail at least 30 days before the hearing to all Montana licensed operators along with a copy of the proposed rules.

History: En. Sec. 6, Ch. 387, L. 1971; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-3609(1), (2).

50-6-304. Cooperative agreements. The department may enter into cooperative agreements with any of the state agencies or political subdivisions for the purpose of carrying out the provisions of this part or any part thereof.

History: En. Sec. 6, Ch. 387, L. 1971; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-3609(3).

50-6-305. Minimum equipment requirements. (1) Pursuant to the provisions of this part, required equipment in an ambulance which is maintained and regularly used for the transportation of patients shall consist of the minimal equipment for ambulances as adopted by the American college of surgeons, March, 1967, and required training shall be set at a level of advanced American red cross first aid or its equivalent.

(2) Nothing in this section shall preclude the use of any vehicle for the transportation of the injured in instances of emergency, need, or disaster situations, and the department shall not prescribe and enforce any rules related to ambulance equipment and training which exceed these requirements.

History: En. Sec. 6, Ch. 387, L. 1971; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-3609(4).

50-6-306. License required. (1) Every person conducting or operating an ambulance service shall procure a license issued by the department. A separate license shall be required for each establishment.

(2) Applications for a license shall be made in writing to the department on forms specified by the department.

(3) Licenses shall be granted as a matter of right unless conditions exist as specified by this part which are grounds for a cancellation or denial of a license.

(4) The applicant may apply for a hearing and judicial review as specified by this part upon being denied a license or upon cancellation.

(5) Each license shall expire on December 31 following its date of issue unless canceled for cause. Renewal may be obtained by paying the required annual license fee.

(6) The license shall not be transferable or be applicable to any premises other than that for which originally issued.

History: **En. Secs. 3, 4, Ch. 387, L. 1971; R.C.M. 1947, 69-3606, 69-3607(2).**

50-6-307. License fee. (1) There shall be paid to the department, with each application for a license or for renewal of a license, an annual license fee of $5.

(2) The department shall deposit fees with the state treasurer to the credit of the state general fund.

(3) Payment of the license fee stipulated in this part shall be accepted in lieu of any and all existing state fees and charges for like purposes or intent which may be existent prior to the adoption of this part.

History: **En. Secs. 4, 10, Ch. 387, L. 1971; R.C.M. 1947, 69-3607(1), 69-3613.**

50-6-308. Cancellation of license. The department may cancel a license if it finds that the licensee has violated provisions of or rules adopted under this part and the licensee has failed or refused to remedy or correct the violation.

History: **En. Sec. 5, Ch. 387, L. 1971; amd. Sec. 12, Ch. 349, L. 1974; R.C.M. 1947, 69-3608(part).**

50-6-309. Submission of plan of correction as bar to cancellation. Submission to the department of an acceptable plan of correction within 10 days after receipt from the department of written notice of violation and execution of an acceptable plan within the time prescribed in the written notice of approval of the plan by the department is a bar to prosecution for violation.

History: **En. Sec. 5, Ch. 387, L. 1971; amd. Sec. 12, Ch. 349, L. 1974; R.C.M. 1947, 69-3608(part).**

50-6-310. Notice and hearing required. (1) The department may not deny or cancel a license without:

(a) delivery to the applicant or licensee of a written statement of the grounds for the denial or cancellation or the charge involved;

(b) an opportunity to answer at a hearing before the board to show cause, if any, why the license should not be denied or canceled.

(2) The licensee shall make written request to the board for a hearing within 10 days after notice of the grounds or charges has been received.

History: **En. Sec. 5, Ch. 387, L. 1971; amd. Sec. 12, Ch. 349, L. 1974; R.C.M. 1947, 69-3608(part).**

50-6-311. Return of license for destruction or deletion. On cancellation of a license, the license certificate shall be returned to the department for destruction or deletion as the department may direct in its notice of cancellation.

History: **En. Sec. 5, Ch. 387, L. 1971; amd. Sec. 12, Ch. 349, L. 1974; R.C.M. 1947, 69-3608(3).**

50-6-312. Hardship exception authorized. (1) If the board finds that the violations of this part do not constitute a danger to the public health and would produce a hardship without equal or greater benefit to the public, the board may grant an exception to the licensee for a period not to exceed 1 year, during which time a license may not be denied the licensee nor may his license be canceled.

(2) Subsequent exceptions may be granted the licensee, each for a period not to exceed 1 year and each after a hearing before the board.

History: **En. Sec. 5, Ch. 387, L. 1971; amd. Sec. 12, Ch. 349, L. 1974; R.C.M. 1947, 69-3608(part).**

50-6-313. Inspections. (1) The department shall make necessary investigations and inspections for enforcement of this part.

(2) The department shall make regular inspections as the rules of the department may direct and special inspections which the department may consider necessary.

(3) The department has free access at all reasonable hours to the establishments listed and defined in 50-6-302 to make inspections.

History: En. Sec. 7, Ch. 387, L. 1971; amd. Sec. 13, Ch. 349, L. 1974; R.C.M. 1947, 69-3610.

50-6-314. Authority of board to compel and take testimony. In any proceeding under this part, the board may administer oaths, issue subpoenas, summon witnesses, and take testimony of any person within the state.

History: En. Sec. 8, Ch. 387, L. 1971; R.C.M. 1947, 69-3611.

50-6-315. County attorney to prosecute violations. When the department furnishes evidence to the county attorney of a county in this state, the county attorney shall prosecute any person violating this part or the rules adopted under this part.

History: En. Sec. 5, Ch. 387, L. 1971; amd. Sec. 12, Ch. 349, L. 1974; R.C.M. 1947, 69-3608(4).

50-6-316. Penalty. Any person violating any provision of this part or regulation made hereunder shall be guilty of a misdemeanor and upon conviction shall be fined not less than $50 or more than $100 for the first offense, not less than $75 or more than $200 for the second offense, and for third and subsequent offenses, not less than $200 or more than $500 or imprisoned in the county jail not to exceed 90 days.

History: En. Sec. 9, Ch. 387, L. 1971; R.C.M. 1947, 69-3612.

CHAPTER 7

HOME HEALTH AGENCIES

(Sections 50-7-101 through 50-7-309 repealed.
Sec. 27, Ch. 347, L. 1979)

Chapter Compiler's Comments
Histories of Repealed Sections:

50-7-101 through 50-7-309. En. Secs. 1 thru 10, Ch. 383, L. 1977; R.C.M. 1947, 69-7301 thru 69-7310.

CHAPTERS 8 THROUGH 14

RESERVED

CHAPTER 15

VITAL STATISTICS

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Section
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50-15-102. Statewide system of vital statistics to be established.

50-15-103. Duties of department.
50-15-104. Appointment and supervision of local registrars.
50-15-105. Appointment of deputies authorized.
50-15-106. Registrars and deputies to report violations.
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50-15-705. Tumor registry.
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Part 1

General Provisions

50-15-101. Definitions. Unless the context requires otherwise, in parts 1 through 4 the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Dead body" means a lifeless human body or parts of a body from which it reasonably may be concluded that death occurred recently.

(3) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(4) "Dissolution of marriage" means a marriage terminated pursuant to Title 40, chapter 4, part 1.

(5) "Fetal death" means a birth after 20 weeks of gestation which is not a live birth.

(6) "Invalid marriage" means a marriage decreed by a district court to be invalid for the reasons contained in 40-1-402.

(7) "Live birth" means the birth of a child who shows evidence of life after being entirely outside the mother.

(8) "Local registrar" means a person appointed by the department to act as its agent in administering this chapter in the area set forth in the letter of appointment.

(9) "Person in charge of interment" means a person who places or causes to be placed a dead body or the ashes after cremation in a grave, vault, urn, or other receptacle or otherwise disposes of the body.

(10) "Physician" means a person legally authorized to practice medicine in this state.

(11) "Vital statistics" includes the registration, preparation, transcription, collection, compilation, and preservation of data pertaining to births, adoptions, legitimations, deaths, fetal deaths, marital status, and incidental supporting data.

History: En. Secs. 2, 41, Ch. 197, L. 1967; amd. Secs. 28, 48, Ch. 349, L. 1974; R.C.M. 1947, 69-4102(1), (2), 69-4401; amd. Sec. 4, Ch. 228, L. 1981.

Compiler's Comments

1981 Amendment: Added definitions of "dissolution of marriage" and "invalid marriage".

Saving Clause: Section 11, Ch. 228, L. 1981, was a saving section.

Severability: Section 12, Ch. 228, L. 1981, was a severability section.

50-15-102. Statewide system of vital statistics to be established. The department shall establish a statewide system of vital statistics and adopt rules for gathering, recording, using, and preserving vital statistics.

History: En. Sec. 42, Ch. 197, L. 1967; amd. Sec. 104, Ch. 349, L. 1974; R.C.M. 1947, 69-4402.

50-15-103. Duties of department. The department shall:

(1) divide the state into registration districts and change districts as necessary;

(2) gather, record, use, and preserve vital statistics;

(3) enforce rules adopted by the department for gathering, recording, using, and preserving vital statistics;

(4) give instructions and prescribe forms for gathering, recording, preserving, and using vital statistics.

History: En. Sec. 43, Ch. 197, L. 1967; amd. Secs. 107 and 109, Ch. 349, L. 1974; R.C.M. 1947, 69-4403.

50-15-104. Appointment and supervision of local registrars. The department shall:

(1) appoint local registrars;

(2) supervise local registrars and other persons required to comply with this chapter.

History: En. Sec. 49, Ch. 197, L. 1967; amd. Sec. 51, Ch. 349, L. 1974; R.C.M. 1947, 69-4409.

50-15-105. Appointment of deputies authorized. With approval of the department, local registrars may appoint deputies.

History: En. Sec. 50, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4410(part).

50-15-106. Registrars and deputies to report violations. Local registrars and deputies shall immediately report violations of this chapter or rules of the department to the department.

History: En. Sec. 50, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4410(part).

50-15-107. Payment of fees to local registrars. (1) The department may specify by regulation a fee to be paid each local registrar for each complete birth, death, or fetal death certificate forwarded by the local registrar to the department or a monthly report stating the local registrar did not file certificates.

(2) The department shall annually certify to the county treasurer the number of births, fetal deaths, deaths, or monthly reports received from his county with the names of the local registrars and the amount due each.

(3) The treasurer shall pay each local registrar out of the county general fund.

History: En. Sec. 71, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4431.

50-15-108. Duty to furnish information. (1) Any person having knowledge of the fact shall furnish information he possesses about a birth, death, fetal death, marriage, dissolution of marriage, or invalid marriage upon demand of the department.

(2) The person in charge of any institution or facility for the care of persons shall record and report all data required by this chapter relating to inmates or patients of the institution or facility.

History: (1)En. Sec. 75, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; Sec. 69-4435, R.C.M. 1947; (2)En. Sec. 70, Ch. 197, L. 1967; Sec. 69-4430, R.C.M. 1947; R.C.M. 1947, 69-4430, 69-4435; amd. Sec. 5, Ch. 228, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "dissolution of marriage, or invalid marriage" for "or divorce" in (1).

Saving Clause: Section 11, Ch. 228, L. 1981, was a saving section.

Severability: Section 12, Ch. 228, L. 1981, was a severability section.

50-15-109. Certificates. (1) All certificates shall include information required by the department.

(2) Local registrars shall forward original certificates to the department, file a duplicate copy with the county clerk and recorder, and retain a triplicate copy.

(3) Local registrars shall not issue certified copies of certificates.

(4) Certificates filed within 6 months after the time prescribed by the department shall be prima facie evidence of the facts stated in the certificates. Data pertaining to the father of a child is prima facie evidence only

if the alleged father is the husband of the mother. If the alleged father is not the husband of the mother, data pertaining to the alleged father is not evidence in any proceedings adverse to his interests, his heirs, next of kin, devisees, legatees, or other successors in interest.

History: En. Secs. 51, 52, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4411, 69-4412.

50-15-110. Certified copy of certificate. Subject to the limitations of 50-15-112, 50-15-113, 50-15-114, subsections (3) and (4) of 50-15-204, and 50-15-206, the department shall furnish to any applicant a certified copy of a certificate or part of it upon request which shall be considered the same as the original.

History: En. Sec. 46, Ch. 197, L. 1967; amd. Sec. 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4406.

50-15-111. Certified copy fee. (1) The department shall prescribe a fee of not less than $3 for a certified copy of certificates or search of files.

(2) Fees received for a certified copy of a certificate or a search of files shall be deposited as follows:

(a) $1 shall be deposited in an earmarked revenue fund to be used by the department for the maintenance of indexes to and costs for the preservation of vital records; and

(b) the remainder shall be deposited in the state general fund.

History: (1)En. Sec. 47, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; Sec. 69-4407, R.C.M. 1947; (2)En. Sec. 48, Ch. 197, L. 1967; Sec. 69-4408, R.C.M. 1947; R.C.M. 1947, 69-4407(part), 69-4408; amd. Sec. 6, Ch. 228, L. 1981.

Compiler's Comments

1981 Amendment: Increased amount of fee from $2 to $3 in (1); substituted "as follows" and subsections (2)(a) and (2)(b) for "in the state general fund".

Saving Clause: Section 11, Ch. 228, L. 1981, was a saving section.

Severability: Section 12, Ch. 228, L. 1981, was a severability section.

50-15-112. Inspection of records and issuance of copies limited. (1) The department may not permit inspection of the records or issue copies of a certificate unless it is satisfied that the applicant has a direct and tangible interest in the data recorded and that the information is necessary for the determination of personal or property rights.

(2) "Tangible interest" includes but is not limited to the interests of the persons described in 50-15-206 for the purposes of custody actions, social security eligibility determinations, or Indian tribal enrollment determinations.

History: En. Sec. 44, Ch. 197, L. 1967; amd. Sec. 49, Ch. 349, L. 1974; R.C.M. 1947, 69-4404(part); amd. Sec. 1, Ch. 178, L. 1979.

50-15-113. Disclosure of information to governmental agencies. (1) The board may direct the department to disclose information from its records to federal, state, county, or municipal agencies for use only as prescribed by the board.

(2) If no identification of individuals is made, the board may permit the use of data contained in vital statistics records for research purposes.

(3) The department may provide transcripts to the federal agency responsible for vital statistics if it is reimbursed for costs.

History: En. Secs. 45, 47, Ch. 197, L. 1967; amd. Secs. 50, 107, Ch. 349, L. 1974; R.C.M. 1947, 69-4405, 69-4407(part).

50-15-114. Unlawful acts and penalties. (1) It is unlawful to disclose data in the vital statistics records of the department, local registrars, or county clerk and recorder unless disclosure is authorized by law and approved by the department.

(2) A person shall be fined not more than $1,000, imprisoned not more than 1 year, or both, if:

(a) he willfully and knowingly makes any false statement in a report, record, or certificate required to be filed by law or in an application for an amendment thereof or willfully and knowingly supplies false information intending that such information be used in the preparation of any such report, record, or certificate or amendment;

(b) without lawful authority and with the intent to deceive, he makes, alters, amends, or mutilates any report, record, or certificate required to be filed under law or a certified copy of the report, record, or certificate;

(c) he willfully and knowingly uses or attempts to use or furnish to another for use, for any purpose of deception, any certificate, record, report, or certified copy made, altered, amended, or mutilated;

(d) with the intention to deceive, he willfully uses or attempts to use any birth certificate or certified copy of a birth record knowing that such certificate or certified copy was issued upon a record which is false in whole or in part or which relates to the birth of another person;

(e) he willfully and knowingly furnishes a birth certificate or certified copy of a birth record with the intention that it be used by a person other than the person to whom the birth record relates.

(3) A person shall be fined not less than $25 or more than $100, imprisoned for not more than 30 days, or both, if:

(a) he knowingly transports or accepts for transportation, interment, or other disposition a dead body without an accompanying permit as provided by law;

(b) he refuses to provide information required by law;

(c) he willfully neglects or violates any of the provisions of law or refuses to perform any of the duties imposed upon him by law.

History: (1)En. Sec. 44, Ch. 197, L. 1967; amd. Sec. 49, Ch. 349, L. 1974; Sec. 69-4404, R.C.M. 1947; (2)En. Sec. 76, Ch. 197, L. 1967; Sec. 69-4436, R.C.M. 1947; (3)En. Sec. 77, Ch. 197, L. 1967; Sec. 69-4437, R.C.M. 1947; R.C.M. 1947, 69-4404(part), 69-4436, 69-4437.

Part 2

Birth

50-15-201. Birth certificate to be filed. Within the time prescribed by the department, a birth certificate shall be filed with the local registrar of the district in which the birth occurred by:

(1) the physician, midwife, or other legally authorized person if the birth is attended;

(2) one of the parents if the birth is unattended.

History: En. Sec. 53, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4413.

50-15-202. Unattended birth. (1) If a birth is unattended and neither parent is able to prepare a birth certificate, the local registrar shall:

(a) secure information from any person having knowledge of the birth;

(b) prepare and file a birth certificate;

(c) within the time prescribed by the department, file a supplementary report furnishing information omitted from the original birth certificate if additional information is received.

(2) Birth certificates completed by a supplementary report shall not be considered "delayed" or "altered".

History: En. Sec. 54, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4414.

50-15-203. Child of unknown parentage. (1) A person who assumes custody of a child of unknown parentage shall immediately file with the local registrar a written report which shall constitute a birth certificate.

(2) The report shall contain:

(a) the date and place of finding or assumption of custody;

(b) sex, color or race, and approximate age of the child;

(c) name and address of the person or institution with whom the child has been placed for care;

(d) name given to the child by the finder or person who assumes custody.

(3) The place where the child was found or custody assumed shall be the place of birth.

(4) The date of birth shall be determined by approximation.

(5) If the child is identified and a regular birth certificate is found or obtained, the report shall be sealed and may be opened only by court order.

History: En. Sec. 55, Ch. 197, L. 1967; R.C.M. 1947, 69-4415.

50-15-204. Delayed or amended birth certificate. (1) After the time prescribed by the department, a person born in this state may file a birth certificate upon submitting proof as required by the department or by any court.

(2) A person may amend a birth, death, or fetal death certificate upon submitting proof as required by the department.

(3) If birth certificates are accepted 6 months or more after the time prescribed for filing or are altered by the department after filing, the certificate shall show the date of the delayed filing or alteration and the mark "delayed" or "altered". A summary statement of the evidence in support of the delayed filing or alteration shall be endorsed on the certificate.

(4) The probative value of a "delayed" or "altered" certificate of birth is determined by the judicial or administrative body before whom the certificate is offered as evidence.

History: (1), (2)En. Sec. 56, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; Sec. 69-4416, R.C.M. 1947; (3)En. Sec. 57, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; Sec. 69-4417, R.C.M. 1947; (4)En. Sec. 59, Ch. 197, L. 1967; Sec. 69-4419, R.C.M. 1947; R.C.M. 1947, 69-4416, 69-4417, 69-4419.

50-15-205. Establishment of date and place of birth when certificate cannot be obtained. If a person born in this state cannot obtain a birth certificate from the department, the judicial procedure to establish date and place of birth is as follows:

(1) The person petitions the district court for an order establishing a public record of his birth alleging the facts which he claims entitle him to the birth certificate.

(2) If the court is satisfied of the truth of the allegations in the petition, it makes an order reciting the facts, determining the time and place of birth, names of parents, and other relevant facts.

(3) The court order or a certified copy is recorded with the county clerk and recorder and with the department.

(4) From the court order, the department makes a transcript of the important facts and issues a delayed birth certificate.

History: En. Sec. 58, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4418.

50-15-206. Permissible disclosure of illegitimate birth. (1) Disclosure of illegitimacy of birth or information from which illegitimacy can be ascertained may be made only:

(a) upon an order of a court to determine personal or property rights. An adopted person of legal age may apply to the court for such an order.

(b) upon request of the department of social and rehabilitation services or a licensed adoption agency for purposes of custody action, social security eligibility determinations, or Indian tribal enrollment determinations;

(c) upon request of the natural parent during the child's minority unless the child has been placed for adoption.

(2) Except when an order of the court is sought, prior to disclosure, the requesting party must submit in writing to the department:

(a) proof of identity when appropriate;

(b) the need for the information; and

(c) the specific purpose for which the information is to be used. The information may be used only for that purpose.

History: En. Sec. 62, Ch. 197, L. 1967; R.C.M. 1947, 69-4422; amd. Sec. 2, Ch. 178, L. 1979.

50-15-207. New birth certificate upon proof of legitimation. Upon receipt of proof of legitimation, the department shall prepare a new birth certificate in the new name of the person legitimated. Evidence upon which the new certificate is based and the original birth certificate shall be sealed and may be opened only upon court order. In case of legitimation, the department shall substitute records in the way provided in 50-15-304(2) for records of adoption.

History: En. Sec. 63, Ch. 197, L. 1967; amd. Sec. 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4423.

Part 3

Marriage and Adoption

50-15-301. Marriage certificates. Before the 10th day of each month, each clerk of a district court shall report marriage certificates filed with him during the preceding calendar month to the department. Reports shall be on forms and contain information prescribed by the department. The applicant for a marriage license shall pay a recording fee of 25 cents to the officer authorized to issue the marriage license.

History: En. Sec. 72, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4432; amd. Sec. 7, Ch. 228, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "10th day" for "16th day" near the beginning of the section.

Saving Clause: Section 11, Ch. 228, L. 1981, was a saving section.

Severability: Section 12, Ch. 228, L. 1981, was a severability section.

50-15-302. Decree of dissolution or declaration of invalidity of marriage. (1) At the same time a decree of dissolution or declaration of invalidity of marriage is filed, the clerk of court shall prepare a report to the department on the form prescribed by the department. Parties to the action or their attorneys shall supply the clerk with necessary information.

(2) The report shall include the:

(a) name, age, birthplace, residence, race or color, and occupation of each party;

(b) number, date, and place of any previous marriage of either party;

(c) number of children under 18 years of age in custody of either party and residing with him;

(d) grounds for the action;

(e) number of the cause of action;

(f) county and judicial district where the action is filed; and

(g) date of judgment and the party which was granted it.

History: En. Sec. 74, Ch. 197, L. 1967; amd. Secs. 107, 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4434; amd. Sec. 4, Ch. 37, L. 1979.

50-15-303. Certificates of dissolution of marriage, adoption, declaration of invalidity of marriage, or annulment of adoption. Before the 10th day of each month, the clerk of court shall prepare and forward to the department a certificate for each decree of dissolution of marriage, adoption, declaration of invalidity of marriage, or annulment of adoption that became final during the preceding calendar month. Certificates shall be on forms prescribed by the department.

History: En. Sec. 73, Ch. 197, L. 1967; amd. Secs. 107, 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4433; amd. Sec. 5, Ch. 37, L. 1979; amd. Sec. 8, Ch. 228, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "10th day" for "16th day" near the beginning of the section.

Saving Clause: Section 11, Ch. 228, L. 1981, was a saving section.

Severability: Section 12, Ch. 228, L. 1981, was a severability section.

50-15-304. Substitute birth certificate for person adopted. (1) The procedure for issuing a substitute birth certificate for a person born in Montana and adopted is as follows:

(a) Before the 16th day of the month following the order of adoption, the clerk of the district court shall forward a certified copy of the final order of adoption to the department or the department may accept a certified copy of a final order of adoption from a court of competent jurisdiction of a foreign state of the United States or a tribal court of competent jurisdiction.

(b) The department shall prepare a substitute certificate containing:

(i) the new name of the adopted person;

(ii) the true date and place of birth and sex of the adopted person;

(iii) statistical facts concerning the adoptive parents in place of the natural parents;

(iv) the words "department of health and environmental sciences" substituted for the words "attendant's own signature"; and

(v) dates of recording as shown on the original birth certificate.

(2) The procedure for recording a substitute certificate of birth for a person born in Montana and adopted is as follows:

(a) The department shall send copies of the substitute certificate to the local registrar and to the county clerk and recorder.

(b) The local registrar and county clerk and recorder shall immediately enter the substitute birth certificate in its files and forward copies of the original birth record to the department.

(c) The department shall seal original birth records and open them only on order of a court.

(3) On receipt of a certified copy of a court order annulling an adoption, the department shall restore the original certificate to its place in its files and notify the local registrar and county clerk and recorder.

History: (1)En. Sec. 60, Ch. 197, L. 1967; amd. Sec. 52, Ch. 349, L. 1974; amd. Sec. 1, Ch. 162, L. 1977; Sec. 69-4420, R.C.M. 1947; (2), (3)En. Sec. 61, Ch. 197, L. 1967; amd. Sec. 53, Ch. 349, L. 1974; Sec. 69-4421, R.C.M. 1947; R.C.M. 1947, 69-4420, 69-4421; amd. Sec. 9, Ch. 228, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "on demand of the adopted person if of legal age or" following "open them only" in (2)(c).

Saving Clause: Section 11, Ch. 228, L. 1981, was a saving section.

Severability: Section 12, Ch. 228, L. 1981, was a severability section.

Part 4

Death

50-15-401. Death certificate to be filed. A death or fetal death certificate shall be filed with the local registrar prior to interment or other disposition of a dead body. If the place of death is known, the certificate shall be filed within 3 days after the occurrence is known. If the place of death or fetal death is unknown, the certificate shall be filed within 24 hours after the occurrence is known.

History: En. Sec. 64, Ch. 197, L. 1967; R.C.M. 1947, 69-4424(1).

50-15-402. Copy to be forwarded to deceased's county of residence. If a state resident dies outside the county of his residence, the clerk and recorder shall send a certified copy of the death certificate to the clerk and recorder of the deceased's county of residence. The copy shall be considered the same as the original.

History: En. Sec. 64, Ch. 197, L. 1967; R.C.M. 1947, 69-4424(2).

50-15-403. Preparation of certificate when death medically attended. A person in charge of interment shall:

(1) obtain personal data required by the department from persons best qualified to supply the data and enter it on the death or fetal death certificate;

(2) (a) present the death certificate to the physician last in attendance upon the deceased, the coroner having jurisdiction, or the state medical examiner, who shall certify the cause of death according to his best knowledge and belief; or

(b) present the fetal death certificate to the physician, midwife, or other person in attendance, who shall certify the fetal death and supply any pertinent additional medical data;

(3) notify the local registrar if the death or fetal death occurred without attendance or if the physician last in attendance failed to sign the death certificate;

(4) file the death or fetal death certificate with the local registrar within 3 days after the occurrence.

History: En. Sec. 65, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-4425; amd. Sec. 28, Ch. 7, L. 1979.

50-15-404. Preparation of certificate when death not medically attended. (1) If the death or fetal death occurred without medical attendance or the physician last in attendance failed to sign the death certificate, the local registrar may complete the certificate on the basis of information received from persons having knowledge of the facts.

(2) If it appears the death or fetal death resulted from other than natural causes, the local registrar shall notify the coroner and the state medical examiner for investigation and certification.

History: En. Sec. 66, Ch. 197, L. 1967; R.C.M. 1947, 66-4426; amd. Sec. 29, Ch. 7, L. 1979.

50-15-405. Permit for disposition of body. (1) No dead body may be disposed of or removed from a registration district until a permit for disposition or removal has been issued by the local registrar.

(2) No permit may be issued until a death certificate, fetal death certificate, or notice of delay as required in subsection (3) of this section has been filed with the local registrar.

(3) If the cause of death or fetal death cannot be determined within 3 days after the occurrence, the attending physician, coroner, or medical examiner shall give the local registrar written notice of the reason for delay so that a permit may be issued for disposition of the body.

History: En. Secs. 67, 68, Ch. 197, L. 1967; R.C.M. 1947, 69-4427, 69-4428; amd. Sec. 30, Ch. 7, L. 1979.

50-15-406. Body brought into state for disposition. If a body is brought into the state for burial or other disposition accompanied by a permit, the local registrar shall endorse the permit and keep a record of it.

History: En. Sec. 69, Ch. 197, L. 1967; R.C.M. 1947, 69-4429.

50-15-407. Disinterment permit. (1) A body, after burial, may be disinterred for reinterment or transport after a permit is obtained from the local registrar of the jurisdiction where the body is interred.

(2) Administration of this section is in the department, which shall adopt rules accordingly. The rules shall provide that, as a precondition to the permit, the applicant make a showing of reasonable cause for the disinterment.

(3) This section provides a supplementary procedure for disinterment of a dead body and is not amendatory to or repealing of any other act.

History: En. Sec. 1, Ch. 481, L. 1973; amd. Sec. 19, Ch. 187, L. 1977; R.C.M. 1947, 69-4428.1.

Parts 5 and 6 reserved

Part 7

Tumor Registry

Part Compiler's Comments

1981 Title: The title to Ch. 354, L. 1981 (SB 37), read: "An act to establish a Montana tumor registry and to require reporting by hospitals of information on patients with tumors."

Severability: Section 7, Ch. 354, L. 1981, was a severability section.

50-15-701. Short title. This part may be cited as the "Tumor Registry Act".

History: En. Sec. 1, Ch. 354, L. 1981.

50-15-702. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(2) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick persons.

(3) "Medical services" means diagnosis or treatment of illness in a human being by or under the supervision of a physician licensed to practice medicine in Montana.

History: En. Sec. 2, Ch. 354, L. 1981.

50-15-703. Duty to report tumors. A hospital that provides to any person medical services relating to a tumor designated as reportable by the department shall make available to the department all medical and personal information relevant to that person's treatment on forms provided by the department.

History: En. Sec. 3, Ch. 354, L. 1981.

50-15-704. Confidentiality. Information received by the department pursuant to this part may not be released unless:

(1) it is in statistical, nonidentifiable form;

(2) the provisions of 50-16-311 are satisfied;

(3) the release or transfer is to a person or organization that is qualified to perform data processing or data analysis and that has safeguards against unauthorized disclosure of that information; or

(4) the release or transfer is to a central tumor registry of another state and is of information concerning a person who is residing in that state.

History: En. Sec. 4, Ch. 354, L. 1981.

50-15-705. Tumor registry. The department shall maintain a registry containing the names of all persons reported to it and all other information submitted to the department concerning those persons pursuant to 50-15-703.

History: En. Sec. 5, Ch. 354, L. 1981.

50-15-706. Rules. The department may adopt rules implementing this part, including:

(1) the types of tumors that are reportable; and

(2) the information on each patient having a reportable tumor that must be submitted to the department.

History: En. Sec. 6, Ch. 354, L. 1981.

Compiler's Comments

Statement of Intent: The statement of intent attached to SB 37 (Ch. 354, L. 1981), read: "A statement of intent is required for this bill because it creates rulemaking authority for the Department of Health and Environmental Sciences to administer a Montana Central Tumor Registry. Rulemaking is primarily necessary to implement Section 3, which requires a hospital to report to the Department medical and personal information relevant to the treatment of any person having a tumor listed as reportable by the Department and given hospital medical services relating to that tumor. Rules would list precisely which tumors would be reportable and specify the information on each tumor patient to be reported. Those tumors most likely to be included are malignant neoplasms; carcinoid tumors, whether malignant, benign, or NOS ("not otherwise specified"); and benign tumors of the brain; but others may be added if their reporting becomes significant either statistically or as an aid to patient treatment, or they are requested to be added by physicians or hospitals.

As for the information to be reported, the rules will ask for:

(1) Medical and personal information on patients with tumors which assists the registry to develop statistics helpful to future health planning and medical treatment such as those showing survival rates for different types of cases and treatments, rates of certain cancers in areas of Montana or particular occupations, etc. (e.g. diagnosis made; medication and/or therapy given; occupation, sex and age of patient).

(2) Sufficient information to allow the registry to track and facilitate follow-up treatment of tumor cases (e.g. name; address; physician; hospital; and any subsequent treatment by hospital, whether or not tumor-related; social security number).

First adopted by the Senate Public Health, Welfare, and Safety Committee on the 26th day of January, 1981."

CHAPTER 16

HEALTH CARE INFORMATION

Part 1 — General Provisions

Section
50-16-101. Public officials and corporations to furnish information on request.
50-16-102. Information on infant morbidity and mortality.

Part 2 — In-Hospital Medical Staff Committees

50-16-201. Data defined.
50-16-202. Committees to have access to information.
50-16-203. Committee information and proceedings confidential and privileged.
50-16-204. Restrictions on use or publication of information.
50-16-205. Data confidential — inadmissible in judicial proceedings.

Part 3 — Confidentiality of Health Care Information

50-16-301. Purpose.
50-16-302. Definitions.
50-16-303. No limitation on licensing boards.
50-16-304. Reporting obligations not limited.
50-16-305. No disciplinary or punitive action for disclosing violation.
Sections 50-16-306 through 50-16-310 reserved.
50-16-311. When consent is required to release or transfer confidential health care information.
50-16-312. Disclosure by third party to physician of person affected.
50-16-313. Rights of person affected regarding modifications and additions.
50-16-314. Privileged information — exemption from compulsory legal process.

Part 1

General Provisions

50-16-101. Public officials and corporations to furnish information on request. On request, employees and officers of firms and corporations and public officials shall furnish public health information to the department of health and environmental sciences.

History: En. Sec. 14, Ch. 197, L. 1967; R.C.M. 1947, 69-4114.

50-16-102. Information on infant morbidity and mortality. (1) If information on infant morbidity and mortality will be used to reduce those problems, data relating to the condition and treatment of any person may be given to the department of health and environmental sciences, Montana medical association, an allied society of the Montana medical association, a committee of a nationally organized medical society or research group, or an in-hospital staff committee.

(2) A person furnishing information under subsection (1) of this section is immune from suit for damages arising from the release of the data or publication of findings and conclusions based on the data.

(3) Data supplied under subsection (1) of this section may be used or published only for advancing medical research or medical education in the interest of reducing infant morbidity or mortality. A summary of studies based on the data may be released for general publication.

(4) The identity of persons whose condition or treatment was studied is confidential and may not be revealed under any circumstances.

(5) Any data supplied or studies based on this data are privileged communications and may not be used as evidence in any legal proceeding. Any attempt to use or offer to supply the data or studies, without consent of the person treated or his legal representative, is prejudicial error resulting in a mistrial.

History: En. Sec. 15, Ch. 197, L. 1967; R.C.M. 1947, 69-4115.

Part 2

In-Hospital Medical Staff Committees

50-16-201. Data defined. As used in this part, "data" means written reports, notes, or records of tissue committees or other medical staff committees in connection with the professional training, supervision, or discipline of the medical staff of hospitals.

History: En. Sec. 4, Ch. 104, L. 1969; R.C.M. 1947, 69-6304.

50-16-202. Committees to have access to information. It is in the interest of public health and patient medical care that in-hospital medical staff committees have access to the records, information, and other data relating to the condition and treatment of patients in such hospital to study and evaluate for the purpose of evaluating matters relating to the care and treatment of such patients for research purposes and for the purpose of reducing morbidity or mortality and obtaining statistics and information relating to the prevention and treatment of diseases, illnesses, and injuries. To carry out such purposes, any hospital, its agents and employees may provide medical records, information, or other data relating to the condition and treatment of any patient in said hospital to any in-hospital medical staff committee.

History: En. Sec. 1, Ch. 104, L. 1969; R.C.M. 1947, 69-6301(part).

50-16-203. Committee information and proceedings confidential and privileged. All such records, data, and information shall be confidential and privileged to said committee and the members thereof, as though such hospital patients were the patients of the members of such committee. All proceedings and in-hospital records and reports of such medical staff committees shall be confidential and privileged.

History: **En. Sec. 1, Ch. 104, L. 1969; R.C.M. 1947, 69-6301(part).**

50-16-204. Restrictions on use or publication of information. Such in-hospital medical staff committees shall use or publish information from such material only for the purpose of evaluating matters of medical care, therapy, and treatment for research and statistical purposes. Neither such in-hospital medical staff committee nor the members, agents, or employees thereof shall disclose the name or identity of any patient whose records have been studied in any report or publication of findings and conclusions of such committee, but such in-hospital medical staff committee, its members, agents, or employees shall protect the identity of any patient whose condition or treatment has been studied and shall not disclose or reveal the name of any such in-hospital patient.

History: **En. Sec. 2, Ch. 104, L. 1969; R.C.M. 1947, 69-6302.**

50-16-205. Data confidential — inadmissible in judicial proceedings. All data shall be confidential and shall not be admissible in evidence in any judicial proceeding, but this section shall not affect the admissibility in evidence of records dealing with the patient's hospital care and treatment.

History: **En. Sec. 3, Ch. 104, L. 1969; R.C.M. 1947, 69-6303.**

Part 3

Confidentiality of Health Care Information

50-16-301. Purpose. The purpose of this part is to establish safeguards for maintaining the integrity of confidential health care information.

History: **En. Sec. 1, Ch. 578, L. 1979.**

50-16-302. Definitions. As used in this part, the following definitions apply:

(1) "Health care provider" means a person, corporation, facility, or institution licensed by this state to provide health care services.

(2) "Health care services" means diagnosis, treatment, medical evaluation, advice, or other activities permitted under the health care licensing statutes of this state.

(3) "Confidential health care information" means information obtained by a health care provider relating to health care history, diagnosis, condition, treatment, or evaluation.

(4) "Peer review committee" means a committee of a state or local professional medical society or of a medical staff of a licensed hospital or other health care facility that is operated pursuant to written bylaws approved by the governing board of the hospital or other health care facility or approved by an organization of health care providers and formed pursuant to state or federal law and authorized by law to evaluate health care services.

(5) "Third party" means a person or entity other than the person to whom the confidential health care information relates and other than a health care provider.

(6) "Qualified person" means a person whose training and experience is appropriate to the nature and level of work in which he is engaged and who, when working as part of an organization, is performing the work with published and adequate administrative safeguards against unauthorized disclosures.

(7) "Administration" includes but is not limited to accreditation, reimbursement, liability risk management, appraisal, and defense or prosecution of legal actions.

History: En. Sec. 2, Ch. 578, L. 1979.

50-16-303. No limitation on licensing boards. This part does not limit the authority, otherwise provided by law, of a licensing or disciplinary board of this state to require a peer review committee to report to it concerning any disciplinary actions or recommendations of the committee or to transfer to it records of the committee's proceedings or actions, including confidential information. This part does not limit the authority of such board to restrict or revoke a license to practice. However, personally identifiable portions of a person's confidential health care information may not be used in any legal action without the written consent of the person or his authorized representative, except upon court order.

History: En. Sec. 6, Ch. 578, L. 1979.

50-16-304. Reporting obligations not limited. This part may not be construed to limit the reporting obligations provided by Title 37, chapter 3, part 4, or any other statute which requires information to be reported to a government agency.

History: En. Sec. 8, Ch. 578, L. 1979.

50-16-305. No disciplinary or punitive action for disclosing violation. No disciplinary or punitive action may be taken against an employee or agent who brings evidence of violation of this part to the attention of a person or entity.

History: En. Sec. 7, Ch. 578, L. 1979.

50-16-306 through 50-16-310 reserved.

50-16-311. When consent is required to release or transfer confidential health care information. (1) Except as provided in subsection (2) or as otherwise specifically provided by law or the Montana Rules of Civil Procedure, confidential health care information relating to a person may not be released or transferred without the written consent of the person or his authorized representative.

(2) Consent is not required for release or transfer of confidential health care information:

(a) to a physician, dentist, or other medical person for diagnosis or treatment of an individual in a medical or dental emergency;

(b) to a peer review committee if the information concerns matters within the scope of the licensed professional practice of the committee members;

(c) to qualified persons for the purpose of conducting scientific research, management audits, financial audits, program evaluations, or similar studies. However, qualified persons may not directly or indirectly identify an individual patient in a research report, audit, or evaluation or disclose a patient's identity in any manner.

(d) to a health care provider:

(i) as may be reasonably necessary to provide health care services to the individual about whom the information relates; or

(ii) in the administration of the office, practice, or operation in connection with the providing of health care services to the individual about whom the information relates;

(e) to an employer as may be reasonably necessary in the administration of a group insurance plan or to a workers' compensation insurer, the division of workers' compensation, or the workers' compensation judge, as is necessary in the administration of Title 39, chapters 71 and 72;

(f) when a person's insurance coverage obligates more than one insurer with respect to a claim or benefit;

(g) to a state insurance department for the purpose of reviewing an insurance claim or complaint made to such department by an insured or his authorized representative or by a beneficiary or his authorized representative of a deceased insured.

History: En. Sec. 3, Ch. 578, L. 1979.

50-16-312. Disclosure by third party to physician of person affected. (1) A third party who has performed an adverse action defined in subsection (2) may transfer confidential health care information to a designated physician when the third party receives a written request signed by the affected person or his authorized representative.

(2) The adverse action referred to in subsection (1) may include but is not limited to:

(a) denial of an application for an insurance policy;

(b) issuance of an insurance policy with other than standard and uniform restrictions;

(c) rejection in whole or in part of any claim for insurance benefits;

(d) denial of an employment application or termination of employment when such denial or termination is for health reasons.

(3) Prior to making a transfer, a third party may require payment of actual expenses incurred in the retrieval, duplication, and forwarding of such information.

(4) A physician receiving confidential health care information pursuant to subsection (1) may review and interpret the information. Thereafter, the physician may, in his discretion, disclose to the affected person as much of the transferred information as he believes is in the best interest of the affected person to know.

History: En. Sec. 4, Ch. 578, L. 1979.

50-16-313. Rights of person affected regarding modifications and additions. (1) After reviewing confidential health care information received pursuant to 50-16-312(4), an affected person or his authorized representative may request a third party to amend or expunge any part of the information that he believes is in error or request the addition of relevant information. Upon receiving such a request, the third party shall notify the health care provider who initially forwarded the information to the third party. If the health care provider concurs with the modification requested by the affected person, the third party shall modify the information in accordance with the request.

(2) Modification of confidential health care information may be required by court order upon action brought by the requestor.

(3) After reviewing confidential health care information received pursuant to 50-16-312(4), a person has the right to place into the confidential file a personal statement of reasonable length regarding the correctness or relevance of existing information or regarding the addition of new information. The statement or a copy thereof shall at all times accompany that part of the information to which it relates.

History: **En. Sec. 4, Ch. 578, L. 1979.**

50-16-314. Privileged information — exemption from compulsory legal process. (1) Except as provided in subsection (2), confidential health care information is not subject to compulsory legal process in any type of proceeding, including any pretrial or other preliminary proceedings, and a person or his authorized representative may refuse to disclose and may prevent a witness from disclosing confidential health care information in any proceeding.

(2) The exemption or privilege provided in subsection (1) does not apply:

(a) when the individual's physical or mental condition is relevant regarding the execution or witnessing of a will or other document;

(b) when the physical or mental condition of an individual is introduced by a party claiming or defending as a successor or beneficiary of the individual;

(c) when an individual makes communications to a psychiatrist in the course of a court-ordered psychiatric examination after having been informed that the communications are admissible only as to issues involving the individual's mental condition;

(d) when required by Rule 35, M.R.Civ.P., or otherwise ordered by a court.

History: **En. Sec. 5, Ch. 578, L. 1979.**

CHAPTER 17

TUBERCULOSIS CONTROL

Part 1 — General Provisions

Section

50-17-101. Policy of state.
50-17-102. Definitions.
50-17-103. Powers and duties of department.
50-17-104. Facilities for diagnosis and treatment of tuberculosis.
50-17-105. Application to require examination or treatment for tuberculosis.
50-17-106. Hearing on the application.
50-17-107. Adjudication of application.
50-17-108. Commitment to hospital on noncompliance with order for examination.

50-17-109. Order of commitment — warrant for transportation.
50-17-110. Confinement in hospital — submission to treatment.
50-17-111. Transfer of person to another hospital.
50-17-112. Procedure to obtain release from commitment.
50-17-113. Voluntary release.
50-17-114. Payment of costs, expenses, and fees.

Part 1

General Provisions

50-17-101. Policy of state. It is the public policy of the state to:

(1) protect persons from the danger of tuberculosis in a communicable state;

(2) provide and maintain a comprehensive program for the prevention, abatement, and adequate control working toward eradication of the disease;

(3) cooperate with other state agencies and the federal government in carrying out these objectives.

History: En. Sec. 24, Ch. 197, L. 1967; R.C.M. 1947, 69-4301.

50-17-102. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

(2) "Local board" means a city, county, city-county, or district board of health.

(3) "Tuberculosis" means a disease caused by the tubercle bacillus characterized by the production of tuberculous lesions.

History: (1)En. Sec. 2, Ch. 197, L. 1967; amd. Sec. 28, Ch. 349, L. 1974; Sec. 69-4102, R.C.M. 1947; (2), (3)En. Sec. 25, Ch. 197, L. 1967; Sec. 69-4302, R.C.M. 1947; R.C.M. 1947, 69-4102(2), 69-4302.

50-17-103. Powers and duties of department. (1) The department shall:

(a) accept, spend, and distribute federal funds available for tuberculosis control;

(b) collect and study data on the incidence of tuberculosis;

(c) adopt rules for the determination of tuberculosis in a communicable state.

(2) The department may, if appropriate, contract with federal agencies or other state agencies for receipt and expenditure of federal funds.

History: En. Secs. 26, 27, Ch. 197, L. 1967; amd. Secs. 45, 104, Ch. 349, L. 1974; R.C.M. 1947, 69-4303, 69-4304.

50-17-104. Facilities for diagnosis and treatment of tuberculosis. (1) Galen state hospital shall maintain facilities to carry out this chapter.

(2) The charge for care, treatment, and maintenance at Galen state hospital shall be at the rate fixed by law.

History: En. Secs. 39, 40, Ch. 197, L. 1967; amd. Secs. 46, 47, Ch. 349, L. 1974; R.C.M. 1947, 69-4316(part), 69-4317.

50-17-105. Application to require examination or treatment for tuberculosis. (1) The department or a local board may apply for an order from the district court if a person is reasonably suspected to have or to have been exposed to communicable tuberculosis, upon request of:

(a) a physician legally authorized to practice medicine in the state;

(b) the department; or

(c) a local health officer.

(2) The application shall request that the person be ordered to:

(a) submit to an examination for tuberculosis; or

(b) enter or return to a hospital for treatment if the person is a menace to public health.

(3) The application for an order provided for in subsections (1) and (2) of this section shall allege that the person:

(a) is suspected of having tuberculosis in a communicable state or has been exposed to communicable tuberculosis, is a menace to public health, and has refused to be examined for tuberculosis as required by rules adopted by the department; or

(b) is suffering from tuberculosis in a communicable state, is a menace to public health, and has refused to enter or has left a hospital against the advice of a physician or health officer.

(4) The application shall state the names of witnesses by which facts alleged may be proved. At least one witness shall be a physician.

History: (1), (2)En. Sec. 28, Ch. 197, L. 1967; Sec. 69-4305, R.C.M. 1947; (3), (4)En. Sec. 29, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; Sec. 69-4306, R.C.M. 1947; R.C.M. 1947, 69-4305, 69-4306; amd. Sec. 6, Ch. 37, L. 1979.

50-17-106. Hearing on the application. The procedure for a hearing on the application is as follows:

(1) A summons stating the time and place of the hearing and a copy of the application are personally served on the person.

(2) The summons, with endorsement of the time of service, is filed with the district court prior to the hearing.

(3) Not fewer than 3 or more than 7 days after service of the summons, a hearing is held in the district court.

(4) The court examines witnesses in attendance or others it wishes to call.

History: En. Sec. 30, Ch. 197, L. 1967; R.C.M. 1947, 69-4307.

50-17-107. Adjudication of application. Following the hearing, the court shall find that the allegations of the application are:

(1) true and order the person committed to a hospital;

(2) true and order the person to submit to an examination for tuberculosis; or

(3) not true and order the person discharged.

History: En. Sec. 31, Ch. 197, L. 1967; R.C.M. 1947, 69-4308.

50-17-108. Commitment to hospital on noncompliance with order for examination. If a person fails to comply with an order to submit to an examination for tuberculosis within the time set, the court shall order him committed to a hospital.

History: En. Sec. 32, Ch. 197, L. 1967; R.C.M. 1947, 69-4309.

50-17-109. Order of commitment — warrant for transportation. The court shall send certified copies of an order of commitment to the hospital and the department or local board of health and issue a warrant directed to the sheriff to transport the person to the designated hospital.

History: En. Sec. 33, Ch. 197, L. 1967; R.C.M. 1947, 69-4310.

50-17-110. Confinement in hospital — submission to treatment. A person committed under 50-17-107 or 50-17-108 shall remain at the hospital until discharged, but he is not required to submit to medical or surgical treatment without written consent. If the person is incompetent, consent by his next of kin or guardian is required. If a person is a minor, consent by his parent or guardian is required. The person in charge of the hospital may use reasonable means to insure that the person committed remains at the hospital.

History: En. Sec. 34, Ch. 197, L. 1967; R.C.M. 1947, 69-4311.

50-17-111. Transfer of person to another hospital. If it is in his best interest, a person may be transferred from the hospital to which he was committed to another hospital approved by the department. The person in charge of the hospital to which the person was committed shall notify the court that ordered commitment, and the department or local board that requested commitment, of the transfer.

History: En. Sec. 37, Ch. 197, L. 1967; R.C.M. 1947, 69-4314.

50-17-112. Procedure to obtain release from commitment. (1) A person committed under 50-17-107 or 50-17-108 may apply for a release.

(2) The procedure for the request and a hearing is:

(a) not fewer than 180 days after commitment, the person applies to the court that ordered commitment requesting release;

(b) not fewer than 3 or more than 7 days after receipt of the request, the court holds a hearing.

(3) Following the hearing, the court:

(a) orders his discharge if it finds he no longer has tuberculosis in a communicable state; or

(b) dismisses the request if it finds he still has tuberculosis in a communicable state.

History: En. Sec. 35, Ch. 197, L. 1967; R.C.M. 1947, 69-4312.

50-17-113. Voluntary release. If the person in charge of the hospital and the department or local board that requested commitment concur that a person is no longer a menace to public health, the person shall be released from the hospital. The person in charge of the hospital shall file a notice of date of release with the court that ordered commitment.

History: En. Sec. 36, Ch. 197, L. 1967; R.C.M. 1947, 69-4313.

50-17-114. Payment of costs, expenses, and fees. (1) Court costs, expenses, and all fees shall be paid by the treasurer of the county from which a person is committed.

(2) Expenses and fees shall be paid as follows:

(a) to sheriffs and their deputies the same fees allowed for similar services in district court;

(b) to physicians, not to exceed two, fees as set by the court;

(c) to witnesses the same fees and mileage provided for attendance in district court;

(d) to persons other than the sheriff or his deputies who transport a person to or from a hospital, witness fees and expenses as verified by the court.

(3) Expenses of transporting a person to a hospital for commitment shall be paid from the general fund of the county from which the person is committed.

History: (1), (2)En. Sec. 38, Ch. 197, L. 1967; Sec. 69-4315, R.C.M. 1947; (3)En. Sec. 39, Ch. 197, L. 1967; amd. Sec. 46, Ch. 349, L. 1974; Sec. 69-4316, R.C.M. 1947; R.C.M. 1947, 69-4315, 69-4316(part).

CHAPTER 18

VENEREAL DISEASE

Part 1 — General Provisions

Section

50-18-101. Venereal diseases defined.
50-18-102. Department to undertake control, prevention, and treatment of venereal diseases.
50-18-103. Cooperation with federal agencies — federal funds.
50-18-104. Serological test for syphilis.
50-18-105. Rules of department binding.
50-18-106. Duty to report cases.
50-18-107. Powers and duties of health officers.
50-18-108. Examination and treatment of prisoners.
50-18-109. Permissible release of information concerning infected persons.
50-18-110. Unlawful dispensation of drugs for cure or alleviation of venereal disease.
50-18-111. Certificate of freedom from venereal disease not to be issued.
50-18-112. Infected person not to expose another to venereal disease.
50-18-113. Violation a misdemeanor.

Part 1

General Provisions

50-18-101. Venereal diseases defined. Syphilis, gonorrhea, chancroid, lympho-granuloma, venereum, and granuloma inguinale are venereal diseases. Venereal diseases are contagious, infectious, communicable, and dangerous to public health.

History: En. Sec. 97, Ch. 197, L. 1967; R.C.M. 1947, 69-4601(part).

50-18-102. Department to undertake control, prevention, and treatment of venereal diseases. The department of health and environmental sciences shall undertake to prevent, control, and prescribe treatments for venereal diseases and may conduct education campaigns for this purpose.

History: En. Sec. 98, Ch. 197, L. 1967; amd. Sec. 57, Ch. 349, L. 1974; R.C.M. 1947, 69-4602(part).

50-18-103. Cooperation with federal agencies — federal funds. (1) The department of health and environmental sciences shall cooperate with federal agencies and may expend federal funds made available to the state for the prevention, control, and treatment of venereal diseases.

(2) The department may accept federal funds available for the prevention, control, and treatment of venereal diseases, deposit funds in the state treasury, and disburse the funds.

History: En. Secs. 98, 99, Ch. 197, L. 1967; amd. Secs. 57, 58, Ch. 349, L. 1974; R.C.M. 1947, 69-4602(part), 69-4603.

50-18-104. Serological test for syphilis. (1) The department of health and environmental sciences shall approve a standard serological test for syphilis. It shall also approve laboratories which may make such tests.

(2) On request the department shall make laboratory tests required by this chapter without charge.

(3) The department shall destroy the results of a test if an erroneous report is made.

History: En. Sec. 107, Ch. 197, L. 1967; R.C.M. 1947, 69-4611.

50-18-105. Rules of department binding. Rules adopted by the department of health and environmental sciences for carrying out the provisions of this chapter are binding on all persons and have the effect of law.

History: En. Sec. 112, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-4616.

50-18-106. Duty to report cases. (1) A physician who diagnoses or treats a venereal disease shall make a record and report the case to the department of health and environmental sciences in the way and on forms provided by the department.

(2) If a physician or other person knows or has reason to suspect that a person who has venereal disease is conducting himself in a way which might expose another to infection, he shall immediately notify the local health officer of the name and address of the diseased person and the essential facts in the case.

History: En. Secs. 100, 103, Ch. 197, L. 1967; R.C.M. 1947, 69-4604, 69-4607.

50-18-107. Powers and duties of health officers. (1) If found necessary or desirable to protect public health, state and local health officers or their authorized deputies or agents shall:

(a) examine or have examined persons reasonably suspected of being infected with venereal disease;

(b) require persons infected to report for treatment to a reputable physician and continue treatment, which may be at public expense, until cured;

(c) isolate or quarantine persons who refuse examination or treatment;

(d) investigate sources of infection of venereal disease.

(2) No one but the state or local health officer may terminate the isolation or quarantine. Examinations may be made repeatedly as deemed advisable or desirable.

History: En. Sec. 101, Ch. 197, L. 1967; R.C.M. 1947, 69-4605.

50-18-108. Examination and treatment of prisoners. Any person confined or imprisoned in any state, county, or municipal prison within the state may be examined for venereal disease. If infected, the person shall be treated by health authorities.

History: En. Sec. 102, Ch. 197, L. 1967; R.C.M. 1947, 69-4606.

50-18-109. Permissible release of information concerning infected persons. (1) Information concerning persons infected or reasonably suspected to be infected with venereal disease may only be released to:

(a) personnel of the department of health and environmental sciences; or

(b) a physician who has written consent of the person whose record is requested.

(2) For the purposes of this section, the term "information" includes all knowledge or intelligence and all communications of all knowledge or intelligence, oral or written or in record form, and also includes but is not limited to information concerning the location or nature of the activities or work of all local, state, or federal employees or officers engaged in venereal disease eradication work, and such personnel are privileged and shall not be required to testify concerning anything within their knowledge or work activities having any relation to venereal disease work.

(3) The purpose of this section is to protect and preserve the principle of confidentiality in venereal disease work by public personnel, local, state, and federal, such confidentiality being all important to the success of all venereal disease eradication work and endeavor, and to require that the principle of confidentiality in such work remain inviolate.

History: En. Sec. 106, Ch. 197, L. 1967; amd. Sec. 1, Ch. 135, L. 1971; amd. Sec. 109, Ch. 349, L. 1974; R.C.M. 1947, 69-4610.

50-18-110. Unlawful dispensation of drugs for cure or alleviation of venereal disease. It is unlawful to prescribe, sell, or recommend any drugs, medicines, or other substances for the cure or alleviation of venereal disease except upon prescription signed by a physician legally authorized to practice medicine in this state.

History: En. Sec. 104, Ch. 197, L. 1967; R.C.M. 1947, 69-4608.

50-18-111. Certificate of freedom from venereal disease not to be issued. No person shall issue a certificate of freedom from venereal disease. However, a physician or health officer may issue a statement of freedom from diseases in an infectious state only if it is written in such form or given under safeguards that will prevent its use in solicitation for sexual intercourse. These statements shall not be used for solicitation for immoral purposes.

History: En. Sec. 105, Ch. 197, L. 1967; R.C.M. 1947, 69-4609.

50-18-112. Infected person not to expose another to venereal disease. A person infected with a venereal disease shall not knowingly expose another person to infection.

History: En. Sec. 97, Ch. 197, L. 1967; R.C.M. 1947, 69-4601(part).

50-18-113. Violation a misdemeanor. A person who violates provisions of this chapter or rules adopted by the department of health and environmental sciences concerning venereal disease or who fails or refuses to obey any lawful order issued by a state or local health officer is guilty of a misdemeanor.

History: En. Sec. 113, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-4617.

CHAPTER 19

PREGNANT WOMEN AND NEWBORN INFANTS

Part 1 — Serological Test for Women Seeking Prenatal Care

Section
50-19-101. Definitions.
50-19-102. Duties of department.
50-19-103. Prenatal blood sample required for serological test.
50-19-104. Approved laboratory to perform test.
50-19-105. Report of positive test results.
50-19-106. Certificate form.
50-19-107. Required and permissible exhibit of test results.
50-19-108. Unauthorized divulgence of information a misdemeanor.
50-19-109. Waiver of test by court when contrary to patient's religious creed.
50-19-110. Birth or fetal death certificate to state whether test made.

Part 2 — Metabolic Tests of Newborn Infants

50-19-201. Definitions.
50-19-202. Administration.
50-19-203. Metabolic tests.
50-19-204. Department and Boulder River school and hospital to furnish assistance when requested.

Part 1

Serological Test for Women Seeking Prenatal Care

50-19-101. Definitions. (1) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(2) "Standard serological test" means a test for syphilis, rubella immunity, and blood group, including ABO (Landsteiner blood type designation—O, A, B, AB) and RH (Dd) type, approved by the department.

History: En. Sec. 1, Ch. 228, L. 1973; amd. Sec. 25, Ch. 187, L. 1977; R.C.M. 1947, 69-6701.

50-19-102. Duties of department. (1) The department shall provide all necessary printing and pay all necessary expenses relative to administration of this part.

(2) Reasonable rules for reports to be submitted by any laboratory making tests and the manner of furnishing the reports to the physician and the state shall be adopted by the department.

(3) The department may use information derived from reports of positive tests for venereal diseases for follow-up procedures required by law or considered necessary by the department for the protection of public health.

History: En. Secs. 3, 7, Ch. 228, L. 1973; R.C.M. 1947, 69-6703(1), (3), 69-6707.

50-19-103. Prenatal blood sample required for serological test. (1) Every female, regardless of age or marital status, seeking prenatal care from a physician is required to submit blood specimen for the purpose of a standard serological test. In submitting the specimen to the laboratory, the physician shall designate it as a prenatal test.

(2) A physician or other person authorized by law to practice obstetrics who attends a pregnant woman shall at the first professional visit take the blood sample and submit it to a laboratory.

(3) A person permitted to attend a pregnant woman, but not permitted to take blood samples, shall have the sample taken by a person permitted to take blood samples and submit it to a laboratory.

(4) Any physician or other person required to take the blood sample who violates this part is guilty of a misdemeanor. However, a person who requests a sample of blood in accordance with this provision and whose request is refused is not guilty of a violation of this section.

History: **En. Sec. 2, Ch. 228, L. 1973; R.C.M. 1947, 69-6702.**

50-19-104. Approved laboratory to perform test. (1) The tests shall be done by an approved laboratory. An approved laboratory shall be the laboratory of the department or a laboratory approved by the department. Any other state, United States public health service, or United States armed forces laboratory shall be approved for the purpose of this part.

(2) The laboratory test may be made on request at the laboratory of the department. A reasonable fee for the test may be established by the department.

History: **En. Sec. 3, Ch. 228, L. 1973; R.C.M. 1947, 69-6703(part).**

50-19-105. Report of positive test results. All positive laboratory tests for any venereal diseases shall be reported to the department by the laboratory preparing the test. The department shall prescribe the form and way of reporting.

History: **En. Sec. 3, Ch. 228, L. 1973; R.C.M. 1947, 69-6703(2).**

50-19-106. Certificate form. The certificate form to be provided the physician recording the results of the test made by the laboratory shall be the same form as that provided with respect to the premarital standard serological test in 40-1-204.

History: **En. Sec. 4, Ch. 228, L. 1973; amd. Sec. 26, Ch. 187, L. 1977; R.C.M. 1947, 69-6704.**

50-19-107. Required and permissible exhibit of test results. The report of the results of the test so certified by the laboratory shall be exhibited by the physician to the patient. Upon request of the patient, the report of the results of the test may be exhibited to the spouse of the patient, or if the patient is a minor, report of the results of the test may be exhibited to the minor's parents or to the minor's legal guardian.

History: **En. Sec. 5, Ch. 228, L. 1973; R.C.M. 1947, 69-6705.**

50-19-108. Unauthorized divulgence of information a misdemeanor. Certificates, laboratory statements or reports, or any other matters in this part referred to and the information therein contained shall be confidential and may not be divulged to or open to inspection by any person other than the patient or those designated by the patient to receive the information or other than state and local health officers or their duly authorized representatives. A person who divulges this information or opens to inspection the certificates, statements, or reports without authority to any person not by law entitled to them is guilty of a misdemeanor and may be fined not more than $100.

History: **En. Sec. 6, Ch. 228, L. 1973; R.C.M. 1947, 69-6706.**

50-19-109. Waiver of test by court when contrary to patient's religious creed. The district court within the county wherein any person affected by this part resides may waive the requirements of this part as to the person if the judge is satisfied, by affidavit or other proof, that the tests required by the part are contrary to the tenets or practices of the religious creed of which the applicant is an adherent and that the public health and welfare will not be injuriously affected thereby.

History: **En. Sec. 8, Ch. 228, L. 1973; R.C.M. 1947, 69-6708.**

50-19-110. Birth or fetal death certificate to state whether test made. A birth or fetal death certificate shall state whether a standard serological test was made on the specimen of blood, but the birth or fetal death certificate may not show the result of the test. The certificate shall state the approximate date when the specimen was taken, and if no test was made, the reason shall be stated.

History: **En. Sec. 9, Ch. 228, L. 1973; R.C.M. 1947, 69-6709.**

Part 2

Metabolic Tests of Newborn Infants

50-19-201. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of health and environmental sciences.

(2) "Newborn" means any infant under 28 days of life.

(3) "Person" means any individual, firm, partnership, association, corporation, or any other entity whether organized for profit or not.

History: **En. Sec. 1, Ch. 227, L. 1973; R.C.M. 1947, 69-6710.**

50-19-202. Administration. This part shall be administered by the department, and the department may adopt rules for the administration of this part.

History: **En. Sec. 3, Ch. 227, L. 1973; R.C.M. 1947, 69-6712.**

50-19-203. Metabolic tests. (1) A person in charge of a facility wherein a child is born or wherein a newborn infant is cared for or a person responsible for the registration of birth of an infant shall ensure each infant is administered tests designed to detect inborn metabolic errors as shall be required to be administered under rules adopted by the department.

(2) The tests shall be done by an approved laboratory. An approved laboratory shall be the laboratory of the department or a laboratory approved by the department.

History: **En. Sec. 2, Ch. 227, L. 1973; R.C.M. 1947, 69-6711.**

50-19-204. Department and Boulder River school and hospital to furnish assistance when requested. (1) The department and the staff of the Boulder River school and hospital shall make available and furnish, when requested, any assistance and services permitted by law to achieve the legislative intent of this part.

(2) The department may determine its procedure for advising the attending physician, the parents, or legal guardian of the newborn infant of any medical results of the test and the availability of assistance, services, or counseling of the department and the staff of the Boulder River school and hospital.

(3) The department may determine procedures for coordination with the Boulder River school and hospital in providing the services and assistance required in this part.

History: En. Sec. 4, Ch. 227, L. 1973; R.C.M. 1947, 69-6713.

CHAPTER 20

ABORTION

Part 1 — Montana Abortion Control Act

Section
50-20-101. Short title.
50-20-102. Statement of purpose.
50-20-103. Legislative intent.
50-20-104. Definitions.
50-20-105. Duties of department.
50-20-106. Consent to abortion.
50-20-107. Written notice to spouse or parent required.
50-20-108. Protection of premature infants born alive.
50-20-109. Control of practice of abortion.
50-20-110. Reporting of practice of abortion.
50-20-111. Right to refuse participation in abortion.
50-20-112. Penalties.

Part 1

Montana Abortion Control Act

50-20-101. Short title. This chapter shall be known and may be cited as the "Montana Abortion Control Act".

History: En. 94-5-613 by Sec. 1, Ch. 284, L. 1974; R.C.M. 1947, 94-5-613.

50-20-102. Statement of purpose. The legislature reaffirms the tradition of the state of Montana to protect every human life, whether unborn or aged, healthy or sick. In keeping with this tradition and in the spirit of our constitution, we reaffirm the intent to extend the protection of the laws of Montana in favor of all human life.

History: En. 94-5-614 by Sec. 2, Ch. 284, L. 1974; R.C.M. 1947, 94-5-614.

50-20-103. Legislative intent. It is the intent of the legislature to restrict abortion to the extent permissible under decisions of appropriate courts or paramount legislation.

History: En. 94-5-623 by Sec. 11, Ch. 284, L. 1974; R.C.M. 1947, 94-5-623.

50-20-104. Definitions. As used in this chapter, the following definitions apply:

(1) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(2) "Facility" means a hospital, health care facility, physician's office, or other place in which an abortion is performed.

(3) "Informed consent" means voluntary consent to an abortion by the woman upon whom the abortion is to be performed only after full disclosure to her by the physician who is to perform the abortion of such of the following information as is reasonably chargeable to the knowledge of the physician in his professional capacity:

(a) the stage of development of the fetus, the method of abortion to be utilized, and the effects of such abortion method upon the fetus;

(b) the physical and psychological effects of abortion; and

(c) available alternatives to abortion, including childbirth and adoption.

(4) "Abortion" means the performance of, assistance or participation in the performance of, or submission to an act or operation intended to terminate a pregnancy without live birth.

(5) "Viability" means the ability of a fetus to live outside the mother's womb, albeit with artificial aid.

History: En. 94-5-615 by Sec. 3, Ch. 284, L. 1974; amd. Sec. 38, Ch. 187, L. 1977; R.C.M. 1947, 94-5-615(part).

50-20-105. Duties of department. (1) The department shall make regulations to provide for the humane disposition of dead infants or fetuses.

(2) The department shall make regulations for a comprehensive system of reporting of maternal deaths and complications within the state resulting directly or indirectly from abortion, subject to the provisions of 50-20-110(5).

(3) The department shall report to the attorney general any apparent violation of this chapter.

History: (1)En. 94-5-617 by Sec. 5, Ch. 284, L. 1974; amd. Sec. 13, Ch. 338, L. 1977; Sec. 94-5-617, R.C.M. 1947; (2)En. 94-5-621 by Sec. 9, Ch. 284, L. 1974; Sec. 94-5-621, R.C.M. 1947; (3)En. 94-5-619 by Sec. 7, Ch. 284, L. 1974; Sec. 94-5-619, R.C.M. 1947; R.C.M. 1947, 94-5-617(4), 94-5-619(6), 94-5-621.

50-20-106. Consent to abortion. (1) No abortion may be performed upon any woman in the absence of informed consent.

(2) Informed consent may be evidenced by a written statement in a form prescribed by the department and signed by the physician and the woman upon whom the abortion is to be performed in which the physician certifies that he has made the full disclosure provided in 50-20-104(3) and in which the woman upon whom the abortion is to be performed acknowledges that the above disclosures have been made to her and that she voluntarily consents to the abortion.

(3) The above informed consent or consent is not required if a licensed physician certifies the abortion is necessary to preserve the life of the mother.

(4) No executive officer, administrative agency, or public employee of the state or of any local governmental body has power to issue any order requiring an abortion or shall coerce any woman to have an abortion, nor shall any person coerce any woman to have an abortion.

(5) Violation of subsections (1) and (4) of this section is a misdemeanor.

History: (1), (3) thru (5)En. 94-5-616 by Sec. 4, Ch. 284, L. 1974; Sec. 94-5-616, R.C.M. 1947; (2)En. 94-5-615 by Sec. 3, Ch. 284, L. 1974; amd. Sec. 38, Ch. 187, L. 1977; Sec. 94-5-615, R.C.M. 1947; R.C.M. 1947, 94-5-615(part), 94-5-616(part).

50-20-107. Written notice to spouse or parent required. (1) No abortion may be performed upon any woman in the absence of:

(a) the written notice to her husband, unless her husband is voluntarily separated from her;

(b) the written notice to a parent, if living, or the custodian or legal guardian of such woman if she is under 18 years of age and unmarried.

(2) Violation of this section is a misdemeanor.

History: En. 94-5-616 by Sec. 4, Ch. 284, L. 1974; R.C.M. 1947, 94-5-616(part).

50-20-108. Protection of premature infants born alive. (1) A person commits the offense of criminal homicide, as defined in 45-5-101 through 45-5-104, if he purposely, knowingly, or negligently causes the death of a premature infant born alive, if such infant is viable.

(2) Whenever a premature infant which is the subject of abortion is born alive and is viable, it becomes a dependent and neglected child subject to the provisions of state law, unless:

(a) the termination of the pregnancy is necessary to preserve the life of the mother; or

(b) the mother and her spouse or either of them have agreed in writing in advance of the abortion or within 72 hours thereafter to accept the parental rights and responsibilities of the premature infant if it survives the abortion procedure.

(3) No person may use any premature infant born alive for any type of scientific research or other kind of experimentation except as necessary to protect or preserve the life and health of such premature infant born alive.

(4) Violation of subsection (3) of this section is a felony.

History: En. 94-5-617 by Sec. 5, Ch. 284, L. 1974; amd. Sec. 13, Ch. 338, L. 1977; R.C.M. 1947, 94-5-617(1) thru (3), (5).

50-20-109. Control of practice of abortion. (1) No abortion may be performed within the state of Montana:

(a) except by a licensed physician;

(b) after the first 3 months of pregnancy, except in a hospital licensed by the department;

(c) after viability of the fetus, unless in appropriate medical judgment the abortion is necessary to preserve the life or health of the mother.

(2) An abortion under subsection (1)(c) may only be performed if:

(a) the foregoing judgment of the physician who is to perform the abortion is first certified in writing by him setting forth in detail the facts upon which he relies in making such judgment; and

(b) two other licensed physicians have first examined the patient and concurred in writing with such judgment. The foregoing certification and concurrence is not required if a licensed physician certifies the abortion is necessary to preserve the life of the mother.

(3) The timing and procedure used in performing an abortion under subsection (1)(c) of this section must be such that the viability of the fetus is not intentionally or negligently endangered, as the term "negligently" is defined in 45-2-101(37). The fetus may be intentionally endangered or destroyed only if necessary to preserve the life or health of the mother.

(4) No physician, facility, or other person or agency shall engage in solicitation, advertising, or other form of communication having the purpose of inviting, inducing, or attracting any person to come to such physician, facility, or other person or agency to have an abortion or to purchase abortifacients.

(5) Violation of subsections (1), (2), and (3) of this section is a felony. Violation of subsection (4) of this section is a misdemeanor.

History: En. 94-5-618 by Sec. 6, Ch. 284, L. 1974; amd. Sec. 20, Ch. 359, L. 1977; R.C.M. 1947, 94-5-618; amd. Sec. 7, Ch. 485, L. 1981.

Compiler's Comments

1981 Amendment: Changed internal references to section 45-2-101 in subsection (3) to reflect amendment of that section.

Effective Date: Section 10, Ch. 485, L. 1981, provided: "This act is effective on passage and approval." Approved April 21, 1981.

50-20-110. Reporting of practice of abortion. (1) Every facility in which an abortion is performed within the state shall keep on file upon a form prescribed by the department a statement dated and certified by the physician who performed the abortion setting forth such information with respect to the abortion as the department by regulation shall require, including but not limited to information on prior pregnancies, the medical procedure employed to administer the abortion, the gestational age of the fetus, the vital signs of the fetus after abortion, if any, and if after viability, the medical procedures employed to protect and preserve the life and health of the fetus.

(2) The physician performing an abortion shall cause such pathology studies to be made in connection therewith as the department shall require by regulation, and the facility shall keep the reports thereof on file.

(3) In connection with an abortion, the facility shall keep on file the original of each of the documents required by this chapter relating to informed consent, consent to abortion, certification of necessity of abortion to preserve the life or health of the mother, and certification of necessity of abortion to preserve the life of the mother.

(4) Such facility shall, within 30 days after the abortion, file with the department a report upon a form prescribed by the department and certified by the custodian of the records or physician in charge of such facility setting forth all of the information required in subsections (1), (2), and (3) of this section, except such information as would identify any individual involved with the abortion. The report shall exclude copies of any documents required to be filed by subsection (3) of this section, but shall certify that such documents were duly executed and are on file.

(5) All reports and documents required by this chapter shall be treated with the confidentiality afforded to medical records, subject to such disclosure as is permitted by law. Statistical data not identifying any individual

involved in an abortion shall be made public by the department annually, and the report required by subsection (4) of this section to be filed with the department shall be available for public inspection except insofar as it identifies any individual involved in an abortion. Names and identities of persons submitting to abortion shall remain confidential among medical and medical support personnel directly involved in the abortion and among persons working in the facility where the abortion was performed whose duties include billing the patient or submitting claims to an insurance company, keeping facility records, or processing abortion data required by state law.

(6) Violation of this section is a misdemeanor and is punishable as provided in 46-18-212.

History: En. 94-5-619 by Sec. 7, Ch. 284, L. 1974; R.C.M. 1947, 94-5-619(1) thru (5); amd. Sec. 10, Ch. 228, L. 1981.

Compiler's Comments

1981 Amendment: Added subsection (6).

Saving Clause: Section 11, Ch. 228, L. 1981, was a saving section.

Severability: Section 12, Ch. 228, L. 1981, was a severability section.

50-20-111. Right to refuse participation in abortion. (1) No private hospital or health care facility shall be required contrary to the religious or moral tenets or the stated religious beliefs or moral convictions of its staff or governing board to admit any person for the purpose of abortion or to permit the use of its facilities for such purpose. Such refusal shall not give rise to liability of such hospital or health care facility or any personnel or agent or governing board thereof to any person for damages allegedly arising from such refusal or be the basis for any discriminatory, disciplinary, or other recriminatory action against such hospital or health care facility or any personnel, agent, or governing board thereof.

(2) All persons shall have the right to refuse to advise concerning, perform, assist, or participate in abortion because of religious beliefs or moral convictions. If requested by any hospital or health care facility or person desiring an abortion, such refusal shall be in writing signed by the person refusing, but may refer generally to the grounds of "religious beliefs and moral convictions". The refusal of any person to advise concerning, perform, assist, or participate in abortion shall not be a consideration in respect of staff privileges of any hospital or health care facility or a basis for any discriminatory, disciplinary, or other recriminatory action against such person, nor shall such person be liable to any person for damages allegedly arising from refusal.

(3) It shall be unlawful to interfere or attempt to interfere with the right of refusal authorized by this section. The person injured thereby shall be entitled to injunctive relief, when appropriate, and shall further be entitled to monetary damages for injuries suffered.

(4) Such refusal by any hospital or health care facility or person shall not be grounds for loss of any privileges or immunities to which the granting of consent may otherwise be a condition precedent or for the loss of any public benefits.

(5) As used in this section, the term "person" includes one or more individuals, partnerships, associations, and corporations.

History: En. 94-5-620 by Sec. 8, Ch. 284, L. 1974; R.C.M. 1947, 94-5-620.

50-20-112. Penalties. (1) A person convicted of criminal homicide under this chapter is subject to the penalties prescribed by 45-5-101 through 45-5-104.

(2) A person convicted of a felony other than criminal homicide under this chapter is subject to a fine not to exceed $1,000, imprisonment in the state prison for a term not to exceed 5 years, or both.

(3) A person convicted of a misdemeanor under this chapter is subject to a fine not to exceed $500, imprisonment in the county jail for a term not to exceed 6 months, or both.

History: En. 94-5-622 by Sec. 10, Ch. 284, L. 1974; amd. Sec. 14, Ch. 338, L. 1977; R.C.M. 1947, 94-5-622.

CHAPTER 21

CADAVERS AND AUTOPSIES

Part 1 — General Provisions

Section
50-21-101. Procurement of cadavers.
50-21-102. Procedure to procure cadavers.
50-21-103. Limitations on right to perform autopsy or dissection.
50-21-104. Autopsies.
50-21-105. Morticians not affected.
50-21-106. Penalty for unauthorized post-mortem examinations.

Part 1

General Provisions

50-21-101. Procurement of cadavers. Any medical school in the United States may procure unclaimed human bodies for use in teaching and demonstrations of anatomy.

History: En. Sec. 153, Ch. 197, L. 1967; R.C.M. 1947, 69-5101.

50-21-102. Procedure to procure cadavers. The procedure to procure a human body for use in teaching and demonstrations of anatomy is as follows:

(1) The medical school shall apply to the person or organization having custody of the unclaimed body asking that the body be delivered to the school for teaching and demonstration of anatomy.

(2) The medical school shall file a notarized statement with the department of health and environmental sciences showing that proper equipment is available for proper handling, security, and preservation of human bodies.

(3) The body shall be kept at the unit, institution, or hospital for at least 3 weeks after the date of death before it can be used.

(4) The medical school shall pay the costs of special preparation and transportation of the body.

(5) A burial permit shall accompany each body, and the medical school shall properly register the body and arrange for burial by a licensed mortician at the expense of the medical school.

(6) If there was no request by the deceased person that his body be buried immediately, the person or organization having custody may deliver an unclaimed body to the medical school applying.

(7) The medical school shall file a statement with the department stating that the body will be used only for teaching and demonstration of anatomy.

History: **En. Sec. 154, Ch. 197, L. 1967; amd. Sec. 105, Ch. 349, L. 1974; R.C.M. 1947, 69-5102.**

50-21-103. Limitations on right to perform autopsy or dissection. The right to perform an autopsy, dissect a human body, or make any post-mortem examination involving dissection of any part of a body is limited to cases where:

(1) specifically authorized by law;

(2) a coroner is authorized to hold an inquest and then only to the extent that the coroner may authorize dissection or autopsy;

(3) authorized by a written statement of the deceased, whether the statement is of a testamentary character or otherwise;

(4) authorized by the husband, wife, or next of kin responsible by law for burial to determine the cause of death and then only to the extent so authorized;

(5) the decedent died in a hospital operated by the United States veterans administration, Montana school for the deaf and blind, or an institution in the department of institutions leaving no surviving husband, wife, or next of kin responsible by law for burial and the manager or superintendent of the hospital or institution where death occurred obtains authority on order of the district court to determine the cause of death and then only to the extent authorized by court order;

(6) the decedent died in the state, was a resident, but left no surviving husband, wife, or next of kin charged by law with the duty of burial and the attending physician obtains authority on order of the district court for the purpose of ascertaining the cause of death and then only to the extent authorized by court order after it has been shown that the physician made diligent search for the next of kin responsible by law for burial.

History: **En. Sec. 155, Ch. 197, L. 1967; R.C.M. 1947, 69-5103.**

50-21-104. Autopsies. All autopsies of a human body shall be performed by a physician legally authorized to practice medicine in this state. Upon completion, the physician shall send a written report of his findings, including the cause of death if determined, to the physician attending the person at the time of death if other than the physician performing the autopsy; upon the request of any such hospital or skilled nursing facility, to the hospital or skilled nursing facility where the person died or where he was confined during his last illness to be retained as part of the permanent record of the hospital or skilled nursing facility; to the next of kin of the decedent or the representative of the decedent's estate upon request, and to such other person lawfully requesting the report.

History: **En. Sec. 156, Ch. 197, L. 1967; amd. Sec. 1, Ch. 158, L. 1973; R.C.M. 1947, 69-5104.**

50-21-105. Morticians not affected. This chapter shall not restrict the right of a licensed mortician to dissect a human body for proper preparation of the body for burial, cremation, or other disposition provided by law.

History: **En. Sec. 157, Ch. 197, L. 1967; R.C.M. 1947, 69-5105.**

50-21-106. Penalty for unauthorized post-mortem examinations. Unless authorized by law, any person who performs an autopsy, dissection, or other post-mortem examination or causes it to be made is guilty of a misdemeanor. Upon conviction he shall be punished by a fine not exceeding $500.

History: **En. Sec. 158, Ch. 197, L. 1967; R.C.M. 1947, 69-5106.**

CHAPTER 22

DETERMINATION OF DEATH

Part 1 — General Provisions

Section
50-22-101. Definition of death.

Part 1

General Provisions

50-22-101. Definition of death. A human body with irreversible cessation of total brain function, as determined according to usual and customary standards of medical practice, is dead for all legal purposes.

History: **En. 69-7201 by Sec. 1, Ch. 228, L. 1977; R.C.M. 1947, 69-7201.**

CHAPTER 23

RABIES CONTROL

Part 1 — Restrictions on Possession of Wild Animals

Section
50-23-101. Definitions.
50-23-102. Prohibition of possession of wild animals — exceptions.
50-23-103. Quarantine — destruction — testing.
50-23-104. Payment of expenses.
50-23-105. Authority to adopt rules.
50-23-106. Injunction — recovery of costs.

Part 1

Restrictions on Possession of Wild Animals

Part Compiler's Comments

1981 Title: The title to Ch. 448, L. 1981 (HB152) read:

"An act to minimize transmission of rabies by prohibiting the possession of bats, skunks, foxes, or racoons and providing for prohibition of possession of certain other animal species known to be capable of transmitting rabies to human beings; and providing an exemption for such animals that are possessed for six months prior to January 1, 1982."

Severability: Section 7, Ch. 448, L. 1981, was a severability section.

50-23-101. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Department of health and environmental sciences" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(2) "Department of livestock" means the department of livestock provided for in Title 2, chapter 15, part 31.

(3) "Person" means an individual, group of individuals, partnership, corporation, firm, or association.

(4) "Wild animal" means a skunk, fox, raccoon, or bat. Other species of normally nondomesticated animals known to be capable of transmitting rabies may be added to this list through the adoption of rules by the department of health and environmental sciences with the approval of the department of livestock.

History: **En. Sec. 1, Ch. 448, L. 1981.**

50-23-102. Prohibition of possession of wild animals — exceptions. No person may possess a wild animal unless he possessed it for at least 6 months prior to January 1, 1982, or it is used in a fur-bearing enterprise, contained in a zoological exhibition in such a manner that it may not come in physical contact with members of the public, or acquired by an educational institution for scientific research.

History: **En. Sec. 2, Ch. 448, L. 1981.**

Cross-References

Property rights in wild and fur-bearing animals, 70-2-111 through 70-2-113.

50-23-103. Quarantine — destruction — testing. (1) Whenever a person unlawfully possesses a wild animal, the department of health and environmental sciences or the department of livestock may impound the animal and take any other action considered reasonable to protect public health.

(2) If a wild animal, whether unlawfully or lawfully in the possession of a person, has bitten or otherwise exposed a person to the potentiality of contracting rabies, the animal may be impounded by the department of health and environmental sciences, the department of livestock, or a local health officer and either quarantined or destroyed and the animal's brain may be tested for rabies.

(3) Any lawfully possessed wild animal that is quarantined pursuant to subsection (2) and found not to be rabid shall be returned to its owner.

History: **En. Sec. 3, Ch. 448, L. 1981.**

50-23-104. Payment of expenses. Expenses incurred by the state under 50-23-103 must be paid by the person from whom possession of the wild animal was taken.

History: **En. Sec. 4, Ch. 448, L. 1981.**

50-23-105. Authority to adopt rules. The department of health and environmental sciences, with the approval of the department of livestock, may adopt rules necessary for the implementation and administration of this part.

History: **En. Sec. 5, Ch. 448, L. 1981.**

Compiler's Comments

Statement of Intent: The statement of intent attached to HB 152 (Ch. 448, L. 1981) provided: "A statement of intent is required for this bill because it creates rulemaking authority for the Department of Health and Environmental Sciences, with the approval of the Department of Livestock, to administer and implement law controlling rabies through limits on the possession of wild pets. Rulemaking is primarily needed to add a species of animal to those presently designated "wild animals" by the act if the chance of rabies occurring in that species increases beyond its present level. Coyotes are an example of a species which may become a rabies threat in the future.

As for other rules, most would clarify terms and phrases used in the bill. Examples of potential rule subject matter are:

(1) to clarify what will be considered a fur-bearing enterprise (50-23-102);

(2) to clarify what controls by zoological exhibitors will be considered to adequately prevent physical contact by the public with wild animals."

50-23-106. Injunction — recovery of costs. (1) In addition to any other remedies provided by law, the department of health and environmental sciences or, upon the request of the department of health and environmental sciences, an appropriate county attorney may file an action to enjoin a violation of this part or rule adopted pursuant to it.

(2) The department of health and environmental sciences or the county attorney, if either prevails in any action brought pursuant to (1) above, is entitled to recover from the other party the costs, expenses, and reasonable attorney's fees incurred.

History: En. Sec. 6, Ch. 448, L. 1981.

Cross-References

Injunctions, Title 27, Ch. 19.

CHAPTERS 24 THROUGH 29

RESERVED

CHAPTER 30

CONSUMER PRODUCT SAFETY ACT

Part 1 — General Provisions

Section

50-30-101. Short title.
50-30-102. Definitions.
50-30-103. Department authorized to adopt rules.
50-30-104. Department to develop accident prevention and health oriented education programs.
50-30-105. Publication of information by department.
50-30-106. Department to conduct investigations.
50-30-107. Powers and duties of department's agents.
50-30-108. Carriers to permit inspection.

Part 2 — Hazardous Substances

50-30-201. Hazardous substance defined.
50-30-202. Misbranded hazardous substance defined.
50-30-203. Banned hazardous substance defined.
50-30-204. Toxic defined.
50-30-205. Highly toxic defined.
50-30-206. Corrosive defined.
50-30-207. Irritant defined.
50-30-208. Strong sensitizer defined.
50-30-209. Extremely flammable, flammable, and combustible defined.
50-30-210. Radioactive substance defined.

50-30-211. Label defined.
50-30-212. Electrical hazards.
50-30-213. Mechanical hazards.
50-30-214. Thermal hazards.
50-30-215. Declaration of hazardous substance.
50-30-216. Additional labeling requirements.
50-30-217. Exemption from labeling requirements.
50-30-218. When labeling requirement complied with.
50-30-219. Ban of hazardous substance authorized.
50-30-220. Toys and other children's articles.

Part 3 — Prohibited Acts, Penalties, and Remedies

50-30-301. Prohibited acts.
50-30-302. Notice and hearing required prior to prosecution.
50-30-303. Department and county attorney to prosecute violations.
50-30-304. Penalty.
50-30-305. Exceptions to penalty.
50-30-306. Injunction authorized.
50-30-307. Detainer of misbranded or banned hazardous substance.

Part 1

General Provisions

50-30-101. Short title. This chapter shall be cited as the "Montana Consumer Product Safety Act of 1975".

History: En. 69-7101 by Sec. 2, Ch. 394, L. 1975; R.C.M. 1947, 69-7101.

50-30-102. Definitions. In this chapter, the following definitions apply:

(1) "Commerce" means all commerce within this state and subject to the jurisdiction thereof and includes the operation of any business or service establishment.

(2) "Court" means, in 50-30-220, the district court for the first judicial district and, in 50-30-306 and 50-30-307, the district court in the district where the violation occurs.

(3) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(4) "Person" includes an individual, partnership, corporation, or association or its legal representative or agent.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(1) thru (3), (18).

50-30-103. Department authorized to adopt rules. (1) The authority to adopt rules for the efficient enforcement of this chapter is vested in the department.

(2) The department has the authority to adopt by reference without public hearing rules adopted under the Federal Hazardous Substances Act as amended.

History: En. 69-7109 by Sec. 9, Ch. 394, L. 1975; R.C.M. 1947, 69-7109.

50-30-104. Department to develop accident prevention and health oriented education programs. The department, in cooperation with other state and federal agencies, shall develop and conduct appropriate accident prevention and health oriented educational programs. The educational programs shall inform the public of the hazards, proper handling and use, disposal, storage, and transportation of hazardous substances and the proper medical and first-aid procedures for accidents resulting from hazardous substances.

History: **En. 69-7112 by Sec. 12, Ch. 394, L. 1975; R.C.M. 1947, 69-7112.**

50-30-105. Publication of information by department. (1) The department may cause to be published from time to time reports summarizing any judgments, research findings, decrees, or court orders which have been rendered under this chapter, including the nature of the charge and the disposition thereof.

(2) The department may also cause to be disseminated information regarding hazardous substances in situations involving imminent danger to health.

(3) Nothing in this section shall be construed to prohibit the department from collecting, reporting, and illustrating the results of the investigations of the department.

History: **En. 69-7113 by Sec. 13, Ch. 394, L. 1975; R.C.M. 1947, 69-7113.**

50-30-106. Department to conduct investigations. (1) The department shall conduct investigations of reported accidental injuries, illnesses, and deaths resulting from the use or misuse of all hazardous substances, as defined by 50-30-201(1)(a), intended or suitable for use by the general public.

(2) Investigations shall evaluate the causative hazardous substance and circumstances of the accident for enforcement of this chapter.

(3) If the offending hazardous substance is a pesticide regulated by another agency under the federal Environmental Pesticide Control Act or the Montana Pesticides Act, the investigation shall yield recommendations to the appropriate regulating agency for appropriate action.

History: **En. 69-7110 by Sec. 10, Ch. 394, L. 1975; amd. Sec. 32, Ch. 187, L. 1977; R.C.M. 1947, 69-7110(3).**

50-30-107. Powers and duties of department's agents. (1) For enforcement of this chapter, officers or employees duly designated by the department, upon presenting appropriate credentials to the owner, operator, or agent in charge, are authorized to:

(a) enter at reasonable times a factory, warehouse, or establishment in which hazardous substances are manufactured, processed, packed, or held for introduction into commerce or are held after such introduction;

(b) enter a vehicle being used to transport or hold hazardous substances in commerce;

(c) inspect at reasonable times, within reasonable limits, and in a reasonable manner a factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, and labeling therein; and

(d) obtain samples of materials or packages or labeling thereof.

(2) If the officer or employee obtains a sample, prior to leaving the premises he shall pay or offer to pay the owner, operator, or agent in charge for the sample and give a receipt describing the samples obtained.

History: **En. 69-7110 by Sec. 10, Ch. 394, L. 1975; amd. Sec. 32, Ch. 187, L. 1977; R.C.M. 1947, 69-7110(1), (2).**

50-30-108. Carriers to permit inspection. (1) For the purpose of enforcing the provisions of this chapter, carriers engaged in commerce and persons receiving hazardous substances in commerce or holding such hazardous substances so received shall, upon the request of an officer or employee duly designated by the department, permit such officer or employee at reasonable times to have access to and to copy all records showing the movement in commerce of any such hazardous substances, the holding thereof during or after such movement, and the quantity, shipper, and consignee thereof.

(2) It is unlawful for any such carrier or person to fail to permit such access to and copying of any record so requested when such request is accompanied by a statement in writing specifying the nature or kind of such hazardous substance to which such request relates, provided that evidence obtained under this section is not used in a criminal prosecution of the person from whom obtained.

(3) Carriers are not subject to the other provisions of this chapter by reason of their receipt, carriage, holding, or delivery of hazardous substances in the usual course of business as carriers.

History: En. 69-7111 by Sec. 11, Ch. 394, L. 1975; R.C.M. 1947, 69-7111.

Part 2

Hazardous Substances

50-30-201. Hazardous substance defined. (1) "Hazardous substance" means:

(a) a substance or mixture of substances which:

(i) is toxic;

(ii) is corrosive;

(iii) is an irritant;

(iv) is a strong sensitizer;

(v) is flammable or combustible; or

(vi) generates pressure through decomposition, heat, or other means if the substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children;

(b) substances which the department by rule finds under 50-30-215 meet the requirements of subsection (1)(a) of this section;

(c) a radioactive substance if, with respect to the substance as used in a particular class of article or as packaged, the department determines by rule that the substance is sufficiently hazardous to require labeling in accordance with this chapter in order to protect the public health; or

(d) a toy or other article intended for use by children which presents an electrical, mechanical, or thermal hazard as determined by the department by rule in accordance with 50-30-220.

(2) (a) The term "hazardous substance" does not apply to pesticides subject to the federal Pesticide Environmental Control Act or the Montana Pesticides Act, to foods, drugs, and cosmetics subject to the Montana Food, Drug, and Cosmetic Act, or to substances intended for use as fuels when

stored in containers and used in the heating, cooking, or refrigeration system of a house.

(b) The term applies, however, to an article which is not itself a pesticide within the meaning of the federal Pesticide Environmental Control Act or the Montana Pesticide Act but which is a hazardous substance within the meaning of subsection (1) of this section by reason of bearing or containing a pesticide.

(c) The term also applies to pesticides whenever human health is directly affected from the use or misuse of pesticides requiring an accident investigation for the purpose of preparing recommendations to federal or state pesticide control agencies.

(3) The term "hazardous substance" does not include source material, special nuclear material, or byproduct material as defined in the Atomic Energy Act of 1954, as amended, and rules issued pursuant thereto by the atomic energy commission.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(4).

50-30-202. Misbranded hazardous substance defined. (1) "Misbranded hazardous substance" means a hazardous substance (including a toy or other article intended for use by children which is a hazardous substance or which bears or contains a hazardous substance in such a manner as to be susceptible of access by a child to whom the toy or other article is entrusted) intended or packaged in a form suitable for use by the public or by children which, except as otherwise provided under 50-30-216 or 50-30-217, fails to bear a label:

(a) which states conspicuously:

(i) the name and place of business of the manufacturer, packer, distributor, or seller;

(ii) the common or usual name or the chemical name (if there is not a common or usual name) of the hazardous substance or each component which contributes substantially to its hazard unless the department by rule permits or requires the use of a recognized generic name;

(iii) the signal word "danger" on substances which are extremely flammable, corrosive, or highly toxic;

(iv) the signal word on all other hazardous substances;

(v) an affirmative statement of the principal hazard or hazards, such as:

(A) "flammable";

(B) "combustible";

(C) "vapor harmful";

(D) "causes burns";

(E) "absorbed through skin"; or

(F) similar wording descriptive of the hazard;

(vi) precautionary measures describing the action to be followed or avoided, except when modified by a rule of the department under 50-30-216 or 50-30-217;

(vii) instruction, when necessary or appropriate, for first-aid treatment;

(viii) "poison" for any hazardous substance which is defined as "highly toxic" by 50-30-205; and

(ix) instructions for handling and storage of packages which require special care in handling or storage such as:

(A) "keep out of the reach of children" or its practical equivalent; or

(B) if the article is intended for use by children and is not a banned hazardous substance, adequate directions for the protection of children from the hazard; and

(b) on which a statement required under subsection (1)(a) of this section is located prominently and is in the English language in conspicuous and legible type in contrast by typography, layout, or color with other printed matter on the label.

(2) The reuse of a food, drug, or cosmetic container as a container for a hazardous substance shall be deemed to be an act which results in the hazardous substance being a misbranded hazardous substance. As used in this subsection, the terms "food", "drug", and "cosmetic" shall have the same meanings as in the Montana Food, Drug, and Cosmetic Act.

History: (1)En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; Sec. 69-7102, R.C.M. 1947; (2)En. 69-7104 by Sec. 4, Ch. 394, L. 1975; Sec. 69-7104, R.C.M. 1947; R.C.M. 1947, 69-7102(13), 69-7104(part).

50-30-203. Banned hazardous substance defined. (1) "Banned hazardous substance" means:

(a) a toy or other article intended for use by children which is a hazardous substance or which bears or contains a hazardous substance in such a manner as to be susceptible of access by a child to whom the toy or other article is entrusted; or

(b) a hazardous substance intended or packaged in a form suitable for use by the general public which the department by rule classifies as a banned hazardous substance on the basis of a finding that, notwithstanding such cautionary labeling as is or may be required under this chapter for that substance, the degree or nature of the hazard involved in the presence or use of the substance by the general public is such that the objective of the protection of the public health and safety can be adequately served only by keeping the substance, when so intended or packaged, out of the channels of commerce.

(2) The department by rule shall exempt from subsection (1)(a) of this section articles such as chemical sets which, by reason of their functional purpose, require the inclusion of the hazardous substance involved or necessarily present an electrical, mechanical, or thermal hazard and which bear labeling giving adequate directions and warnings for safe use and are intended for use by children who have attained sufficient maturity and may reasonably be expected to read and heed the directions and warnings.

(3) Proceedings for the issuance, amendment, or repeal of rules under subsections (1)(b) and (2) of this section shall be governed by the provisions of 50-30-219 and 50-30-220.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(14).

50-30-204. Toxic defined. "Toxic" means a substance (other than a radioactive substance) which has the capacity to produce personal injury or illness to man through ingestion, inhalation, or absorption through any body surface.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(5).

50-30-205. Highly toxic defined. (1) "Highly toxic" means a substance which falls within any of the following categories:

(a) produces death within 14 days in one-half or more of a group of 10 or more laboratory white rats each weighing between 200 and 300 grams at a single dose of 50 milligrams or less per kilogram of body weight when orally administered;

(b) produces death within 14 days in one-half or more of a group of 10 or more laboratory white rats each weighing between 200 and 300 grams when inhaled continuously for a period of 1 hour or less at an atmosphere concentration of 200 parts per million or less by volume of gas or vapor or 2 milligrams per liter or less by volume of mist or dust if that concentration is likely to be encountered by man when the substance is used in a reasonably foreseeable manner; or

(c) produces death within 14 days in one-half or more of a group of 10 or more rabbits tested in a dosage of 200 milligrams or less per kilogram of body weight when administered by continuous contact with the bare skin for 24 hours or less.

(2) If the department finds that available data on human experience with a substance indicates results different from those obtained on animals in the above-named dosages or concentrations, the human data shall take precedence.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(6).

50-30-206. Corrosive defined. "Corrosive" means a substance which in contact with living tissue will cause destruction of tissue by chemical action but does not refer to action on inanimate surfaces.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(7).

50-30-207. Irritant defined. "Irritant" means a substance not corrosive within the meaning of 50-30-206 which on immediate, prolonged, or repeated contact with normal living tissue will induce a local inflammatory reaction.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(8).

50-30-208. Strong sensitizer defined. "Strong sensitizer" means a substance which will cause on normal living tissue, through an allergic or photodynamic process, a hypersensitivity.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(9).

50-30-209. Extremely flammable, flammable, and combustible defined. (1) "Extremely flammable" applies to a substance which has a flash point at or below 20 degrees F, as determined by the Tagliabue open cup tester.

(2) "Flammable" applies to a substance which has a flash point above 20 degrees to and including 80 degrees F, as determined by the Tagliabue open cup tester.

(3) "Combustible" applies to a substance which has a flash point above 80 degrees to and including 150 degrees F, as determined by the Tagliabue open cup tester.

(4) The flammability or combustibility of solids and the contents of self-pressurized containers shall be determined by methods found by the department to be generally applicable to the materials or containers, respectively, and established by rules issued by the department, which rules shall also define the terms "flammable", "combustible", and "extremely flammable" in accord with the methods used.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(10).

50-30-210. Radioactive substance defined. "Radioactive substance" means a substance which emits ionizing radiation.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(11).

50-30-211. Label defined. "Label" means a display of written, printed, or graphic matter upon the immediate container ("immediate container" does not include package liners) of a substance or, in the case of an article which is unpackaged or is not packaged in an immediate container intended or suitable for delivery to the ultimate consumer, a display of such matter directly upon the article involved or upon a tag or other suitable material affixed thereto.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(part (12)).

50-30-212. Electrical hazards. An article may be determined to present an electrical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture may cause personal injury or illness by electric shock.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(15).

50-30-213. Mechanical hazards. An article may be determined to present a mechanical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture presents an unreasonable risk of personal injury or illness:

(1) from fracture, fragmentation, or disassembly of the article;

(2) from propulsion of the article (or a part or accessory thereof);

(3) from points or other protrusions, surfaces, edges, openings, or closures;

(4) from moving parts;

(5) from lack or insufficiency of controls to reduce or stop motion;

(6) as a result of self-adhering characteristics of the article;

(7) because the article (or a part or accessory thereof) may be aspirated or ingested;

(8) because of instability; or

(9) because of any other aspect of the article's design or manufacture.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(16).

50-30-214. Thermal hazards. An article may be determined to present a thermal hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture presents an unreasonable risk of personal injury or illness because of heat as from heated parts, substances, or surfaces.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(17).

50-30-215. Declaration of hazardous substance. When in the judgment of the department such action will promote the objectives of this chapter by avoiding or resolving uncertainty as to its application, the department may by rule declare to be a hazardous substance a substance or mixture of substances which the department finds meets the requirements of 50-30-201(1)(a).

History: En. 69-7103 by Sec. 3, Ch. 394, L. 1975; amd. Sec. 28, Ch. 187, L. 1977; R.C.M. 1947, 69-7103(1).

50-30-216. Additional labeling requirements. If the department finds that the requirements of 50-30-202(1)(a) are not adequate for the protection of the public health and safety in view of the special hazard presented by a hazardous substance, the department may by rule establish such reasonable variations or additional labeling requirements as are necessary for the protection of the public health and safety, and a hazardous substance intended or packaged in a form suitable for use by the general public or by children which fails to bear a label in accordance with the rules is a misbranded hazardous substance.

History: En. 69-7103 by Sec. 3, Ch. 394, L. 1975; amd. Sec. 28, Ch. 187, L. 1977; R.C.M. 1947, 69-7103(2).

50-30-217. Exemption from labeling requirements. If the department finds that because of the size of the package involved, because of the minor hazard presented by the substance contained therein, or for other good and sufficient reasons full compliance with the labeling requirements otherwise applicable under this chapter is impracticable or is not necessary for the adequate protection of the public health and safety, the department shall adopt rules exempting the substance from these requirements to the extent of being consistent with adequate protection of the public health and safety.

History: En. 69-7103 by Sec. 3, Ch. 394, L. 1975; amd. Sec. 28, Ch. 187, L. 1977; R.C.M. 1947, 69-7103(3).

50-30-218. When labeling requirement complied with. A requirement made by or under authority of this chapter that a word, statement, or other information appear on the label shall not be considered to be complied with unless the word, statement, or other information also appears:

(1) on the outside container or wrapper, if any, unless it is easily legible through the outside container or wrapper; and

(2) on all accompanying literature where there are directions for use, written or otherwise.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(part (12)).

50-30-219. Ban of hazardous substance authorized. If the department finds that the hazard of an article subject to this chapter is such that labeling adequate to protect the public health and safety cannot be devised or the article presents an imminent danger to the public health and safety, the department may declare the article a banned hazardous substance and require its removal from commerce.

History: En. 69-7103 by Sec. 3, Ch. 394, L. 1975; amd. Sec. 28, Ch. 187, L. 1977; R.C.M. 1947, 69-7103(4).

50-30-220. Toys and other children's articles. (1) A determination by the department that a toy or other article intended for use by children presents an electrical, mechanical, or thermal hazard shall be made by rule in accordance with this chapter.

(2) If, before or during a proceeding under subsection (1) of this section, the department finds that because of an electrical, mechanical, or thermal hazard distribution of a toy or other article involved presents an imminent hazard to the public health and the department gives notice of the finding, the toy or other article is a banned hazardous substance for purposes of this chapter until the proceeding has been completed. If not yet initiated when the notice is given, the proceeding shall be initiated as promptly as possible.

(3) (a) In the case of a toy or other article intended for use by children which is determined by the department to present an electrical, mechanical, or thermal hazard, a person who will be adversely affected by the determination may, at any time before the 60th day after the rule making the determination is issued by the department, file a petition with the court for a judicial review of the determination. A copy of the petition shall be immediately transmitted by the clerk of the court to the department. The department shall file in the court the record of the proceedings on which the department based its determination.

(b) If the petitioner applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there was no opportunity to adduce the evidence in the proceeding before the department, the court may order the additional evidence (and evidence in rebuttal thereof) to be taken before the department in a hearing or in another manner and upon other terms and conditions as the court considers proper. The department may modify its findings as to the facts or make new findings by reason of the additional evidence so taken, and it shall file the modified or new findings and its recommendation, if any, for the modification or setting aside of its original determination with the return of the additional evidence.

(c) Upon the filing of the petition under subsection (3) of this section, the court has jurisdiction to review the determination of the department. If the court ordered additional evidence to be taken under subsection (3)(b) of this section, the court shall also review the department's determination to determine if, on the basis of the entire record before the court under subsections (3)(a) and (3)(b) of this section, it is supported by substantial evidence. If the court finds the determination is not so supported, the court may set it aside. With respect to a determination reviewed under subsection (3) of this section, the court may grant appropriate relief pending conclusion of the review proceedings.

History: En. 69-7103 by Sec. 3, Ch. 394, L. 1975; amd. Sec. 28, Ch. 187, L. 1977; R.C.M. 1947, 69-7103(5).

Part 3

Prohibited Acts, Penalties, and Remedies

50-30-301. Prohibited acts. The following acts and the causing thereof are prohibited:

(1) the introduction or delivery for introduction into commerce of any misbranded hazardous substance or banned hazardous substance;

(2) the alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the label of or the doing of any other act with respect to a hazardous substance if such act is done while the substance is in commerce or while the substance is held for sale (whether or not the first sale) after shipment in commerce and results in the hazardous substance being a misbranded hazardous substance or a banned hazardous substance;

(3) the receipt in commerce of any misbranded hazardous substance or banned hazardous substance and the delivery or proffered delivery thereof for pay or otherwise;

(4) the giving of a guarantee or undertaking referred to in 50-30-305(2), which guarantee or undertaking is false, except by a person who relies upon a guarantee or undertaking to the same effect signed by and containing the name and address of the person residing in the United States from whom he received in good faith the hazardous substance;

(5) the failure to permit entry or inspection as authorized by 50-30-107(1) or to permit access to any copying of any record as authorized by 50-30-108;

(6) the introduction or delivery for introduction into commerce or the receipt in commerce and subsequent delivery or proffered delivery for pay or otherwise of a hazardous substance in a reused food, drug, or cosmetic container or in a container which, though not a reused container, is identifiable as a food, drug, or cosmetic container by its labeling or by other identification;

(7) the use by any person to his own advantage or revealing other than to the department or officers or employees of the agency or to the courts when relevant in any judicial proceeding under this chapter of any information acquired under authority of 50-30-106 and 50-30-107 concerning any method or process which as a trade secret is entitled to protection.

History: **En. 69-7104 by Sec. 4, Ch. 394, L. 1975; R.C.M. 1947, 69-7104(part); amd. Sec. 7, Ch. 37, L. 1979.**

50-30-302. Notice and hearing required prior to prosecution. Before a violation of this chapter is reported to a county attorney for the institution of a criminal proceeding, the person against whom the proceeding is contemplated shall be given appropriate notice and an opportunity to present his views before the department, either orally or in writing and either in person or by attorney, with regard to the contemplated proceeding.

History: **En. 69-7108 by Sec. 8, Ch. 394, L. 1975; amd. Sec. 31, Ch. 187, L. 1977; R.C.M. 1947, 69-7108(part).**

50-30-303. Department and county attorney to prosecute violations. It is the duty of the department or the county attorney to whom the department reports a violation of this chapter to cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law.

History: En. 69-7108 by Sec. 8, Ch. 394, L. 1975; amd. Sec. 31, Ch. 187, L. 1977; R.C.M. 1947, 69-7108(part).

50-30-304. Penalty. A person who violates the provisions of 50-30-301 is guilty of a misdemeanor and shall be fined no more than $500 or be imprisoned for any term not to exceed 90 days, or both. For offenses committed with intent to defraud or mislead or for second and subsequent offenses, the penalty shall be imprisonment for any term not to exceed 1 year or a fine of no more than $3,000, or both.

History: En. 69-7105 by Sec. 5, Ch. 394, L. 1975; amd. Sec. 29, Ch. 187, L. 1977; R.C.M. 1947, 69-7105(1).

50-30-305. Exceptions to penalty. No person is subject to the penalties of 50-30-304:

(1) for having violated 50-30-301(3) if the receipt, delivery, or proffered delivery of the hazardous substance was made in good faith unless he refuses to furnish on request of an officer or employee duly designated by the department the name and address of the person from whom he purchased or received the hazardous substance and copies of all documents pertaining to the delivery of the hazardous substance to him; or

(2) for having violated 50-30-301(1) if he establishes a guarantee or undertaking signed by and containing the name and address of the person residing in the United States from whom he received in good faith the hazardous substance to the effect that the hazardous substance is not a misbranded or banned hazardous substance within the meaning of those terms in this chapter.

History: En. 69-7105 by Sec. 5, Ch. 394, L. 1975; amd. Sec. 29, Ch. 187, L. 1977; R.C.M. 1947, 69-7105(2).

50-30-306. Injunction authorized. In addition to the remedies hereinafter provided, the department is authorized to apply to court for and such court shall have jurisdiction upon hearing and for cause shown to grant a temporary or permanent injunction restraining any person from violating any provision of 50-30-301, irrespective of whether or not there exists an adequate remedy at law.

History: En. 69-7106 by Sec. 6, Ch. 394, L. 1975; R.C.M. 1947, 69-7106.

50-30-307. Detainer of misbranded or banned hazardous substance. (1) If a duly authorized agent of the department finds or has probable cause to believe that a hazardous substance is misbranded or is a banned hazardous substance within the meaning of this chapter, he shall affix to the article a tag or other appropriate marking giving notice that the article is or is suspected of being misbranded or is a banned hazardous substance and has been detained or embargoed and warning all persons not to remove or dispose of the article by sale or otherwise until permission for removal or disposal is given by the agent or the court. It is unlawful for a person to remove or dispose of a detained or embargoed article by sale or otherwise without permission.

(2) If an article detained or embargoed under subsection (1) is found by the agent to be misbranded or a banned hazardous substance, he shall petition the judge of the city, justice's, or district court in whose jurisdiction the article is detained or embargoed for an order of condemnation of the article. If the agent finds that an article so detained or embargoed is not misbranded or a banned hazardous substance, he shall remove the tag or other marking.

(3) (a) If the court finds that a detained or embargoed article is misbranded or a banned hazardous substance, the article shall, after entry of the decree, be destroyed at the expense of the claimant thereof under supervision of the agent, and all court costs and fees and storage and other proper expenses are to be taxed against the claimant of the article or his agent.

(b) If the misbranding can be corrected by proper labeling of the article, the court, after entry of the decree and after the costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that the article will be so labeled, has been executed, may by order direct that the article be delivered to the claimant thereof for the labeling under the supervision of an agent of the department. The expense of the supervision shall be paid by the claimant. The article shall be returned to the claimant on the representation to the court by the department that the article is no longer in violation of this chapter and that the expenses of the supervision have been paid.

History: En. 69-7107 by Sec. 7, Ch. 394, L. 1975; amd. Sec. 30, Ch. 187, L. 1977; R.C.M. 1947, 69-7107.

CHAPTER 31

MONTANA FOOD, DRUG, AND COSMETIC ACT

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Part 1

General Provisions

50-31-101. Short title. This chapter may be cited as the "Montana Food, Drug, and Cosmetic Act".

History: En. Sec.1, Ch. 307, L. 1967; R.C.M. 1947, 27-701.

50-31-102. Applicability of chapter. The provisions of this chapter regarding the selling of food, drugs, devices, or cosmetics shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of these articles for sale; the sale, dispensing, and giving of these articles; and the supplying or applying of these articles in the conduct of a food, drug, or cosmetic establishment.

History: En. Sec. 2, Ch. 307, L. 1967; amd. Sec. 1, Ch. 171, L. 1971; amd. Sec. 1, Ch. 114, L. 1974; amd. Sec. 3, Ch. 349, L. 1974; R.C.M. 1947, 27-702(q).

50-31-103. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Advertisement" means representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing or

which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics.

(2) "Beef patty mix" means "hamburger" or "ground beef" to which has been added binders or extenders as those terms are understood by general custom and usage in the food industry.

(3) "Color" includes black, white, and intermediate grays.

(4) (a) "Color additive" means a material which:

(i) is a dye, pigment, or other substance made by a process of synthesis or similar artifice or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source; or

(ii) when added or applied to a food, drug, or cosmetic or to the human body is capable (alone or through reaction with other substance) of imparting color thereto.

(b) This term does not include material which has been or hereafter is exempted under the federal act.

(5) "Consumer commodity", except as otherwise specifically provided by this subsection, means any food, drug, device, or cosmetic as those terms are defined by this chapter or by the federal act and regulations pursuant thereto. The term does not include:

(a) any tobacco or tobacco product;

(b) a commodity subject to packaging or labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the act of March 4, 1913 (37 Stat. 832-833; 21 U.S.C. 151-157), commonly known as the virus, serum, and toxin act;

(c) a drug subject to 50-31-306(1)(m) or 50-31-307(1)(c) or section 503(b)(1) or 506 of the federal act;

(d) a beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C., et seq.); or

(e) a commodity subject to the Federal Seed Act (7 U.S.C. 1551-1610).

(6) "Contaminated with filth" applies to a food, drug, device, or cosmetic not securely protected from dust, dirt, and, as far as may be necessary by all reasonable means, from foreign or injurious contaminations.

(7) "Cosmetic" means:

(a) articles intended to be rubbed, poured, sprinkled, sprayed on, introduced into, or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance;

(b) articles intended for use as a component of these articles, except that the term does not include soap.

(8) "Counterfeit drug" means a drug, drug container, or drug label which, without authorization bears the trademark, trade name, or other identifying mark, imprint, or device or any likeness thereof of a drug manufacturer, processor, packer, or distributor other than the person who in fact manufactured, processed, packed, or distributed the drug and which falsely purports or is represented to be the product of or to have been packed or distributed by the other drug manufacturer, processor, packer, or distributor.

(9) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(10) "Device" (except when used in 50-31-107(2), 50-31-203(6), 50-31-306(1)(c) and (1)(q), 50-31-402(3), and 50-31-501(10)) means instruments, apparatus, and contrivances, including their components, parts, and accessories, intended:

(a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(b) to affect the structure or function of the body of man or other animals.

(11) "Drug" means:

(a) articles recognized in the official United States Pharmacopoeia, official National Formulary, or a supplement to either of these;

(b) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(c) articles (other than food) intended to affect the structure or function of the body of man or other animals;

(d) articles intended for use as components of any article specified in subsections (a), (b), or (c) but does not include devices or their components, parts, or accessories.

(12) "Federal act" means the Federal Food, Drug, and Cosmetic Act, as amended (Title 21 U.S.C. 301, et seq.).

(13) "Food" means:

(a) articles used for food or drink for man or other animals;

(b) chewing gum; and

(c) articles used for components of these articles.

(14) (a) "Food additive" means a substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of food (including a substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food and including a source of radiation intended for this use), if the substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use.

(b) This term does not include:

(i) a pesticide chemical in or on a raw agricultural commodity;

(ii) a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of a raw agricultural commodity;

(iii) color additive;

(iv) substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the federal act, the Poultry Products Inspection Act (21 U.S.C. 451, et seq.), or the Meat Inspection Act of March 4, 1907 (34 Stat. 1260), as amended and extended (21 U.S.C. 71, et seq.).

(15) "Food service establishment" means a restaurant, catering vehicle, vending machine, delicatessen, fast-food retailer, or any other place that serves food to the public for consumption either at or away from the point of service, and any facility operated by a governmental entity where food is served.

(16) "Hamburger" or "ground beef" means ground fresh or frozen beef or a combination of both fresh and frozen beef, with or without the addition of suet, to which no water, binders, or extenders are added. There are three grades of hamburger or ground beef:

(a) "economy hamburger" or "economy ground beef" may have a fat content no greater than the federal standard set forth in 9 C.F.R. 319.15;

(b) "regular hamburger" or "regular ground beef" may have a fat content no greater than 21%;

(c) "extra lean hamburger" or "extra lean ground beef" may have a fat content no greater than 18%.

(17) "Honey" means the nectar and saccharine exudations of plants gathered, modified, and stored in the comb by honey bees; is levorotatory, contains not more than 25% of water, not more than .25% of ash, and not more than 8% sucrose.

(18) "Label" means a display of written, printed, or graphic matter on the immediate container of an article. ("Immediate container" does not include package liners.)

(19) "Labeling" means labels and other written, printed, or graphic matter:

(a) on an article or its containers or wrappers;

(b) accompanying the article.

(20) "Menu" means any list presented to the patron which states the food items for sale in a food service establishment.

(21) "New drug" means a drug, the composition of which is such that:

(a) it is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in its labeling; or

(b) the drug, as a result of investigations to determine its safety and effectiveness for use under the conditions prescribed, has become so recognized but which has not, otherwise than in the investigations, been used to a material extent or for a material time under the conditions prescribed.

(22) "Official compendium" means the official United States Pharmacopoeia, official National Formulary, or a supplement to either of these.

(23) "Package" means a container or wrapping in which a consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers but does not include:

(a) shipping containers or wrappings used solely for the transportation of a consumer commodity in bulk or in quantity to manufacturers, packers, or processors or to wholesale or retail distributors;

(b) shipping containers or outer wrappings used by retailers to ship or deliver a commodity to retail customers if the containers and wrappings bear no printed matter pertaining to a particular commodity.

(24) "Person" includes an individual, partnership, corporation, and association.

(25) "Pesticide chemical" means a substance which alone, in chemical combination, or in formulation with one or more other substances is an "economic poison" under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C., secs. 135-135k), as amended, and which is used in the production, storage, or transportation of raw agricultural commodities.

(26) "Placard" means any nonpermanent sign used to display or describe food items for sale in a food service establishment or retail establishment.

(27) "Principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

(28) "Raw agricultural commodity" means food in its raw or natural state, including fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

(29) "Retail establishment" means a commercial establishment at which meat or meat products are displayed for sale or provision to the public with or without charge.

(30) "State board" or "board" means the board of health and environmental sciences provided for in 2-15-2104.

History: En. Sec. 2, Ch. 307, L. 1967; amd. Sec. 1, Ch. 171, L. 1971; amd. Sec. 1, Ch. 114, L. 1974; amd. Sec. 3, Ch. 349, L. 1974; R.C.M. 1947, 27-702(part); amd. Sec. 8, Ch. 37, L. 1979; amd. Sec. 1, Ch. 456, L. 1979; amd. Sec. 1, Ch. 361, L. 1981.

Compiler's Comments

1981 Amendment: Inserted subsection (2); inserted "or ground beef" after "Hamburger" at the beginning of (16); deleted "and with or without the addition of seasoning, if no fat other that [sic] suet is incorporated in the hamburger, the total fat content does not exceed 20%, and" after "with or without the addition of suet" in (16); added the last sentence of (16) and (16)(a) through (16)(c); deleted former subsection (17) defining "imitation hamburger"; added "or retail establishment" at the end of (26); inserted subsection (29); deleted former subsection (30) defining "wallboard" signs; and made minor changes in grammar.

50-31-104. Department authorized to adopt rules. (1) The department may adopt rules for the efficient enforcement of this chapter. The department may adopt by reference the regulations adopted by the food and drug administration under the federal act and the Fair Packaging and Labeling Act (15 U.S.C. 1451, et seq.).

(2) No hearing is required for adoption by reference of those regulations adopted under the federal act and the Fair Packaging and Labeling Act (15 U.S.C. 1451, et seq.).

History: En. Sec. 21, Ch. 307, L. 1967; amd. Sec. 3, Ch. 171, L. 1971; amd. Sec. 4, Ch. 349, L. 1974; R.C.M. 1947, 27-721.

50-31-105. Publication of information by department. (1) The department may cause to be published from time to time reports summarizing all judgments, decrees, and court orders which have been rendered under this chapter, including the nature of the charge and the disposition thereof.

(2) The department may also cause to be disseminated such information regarding food, drugs, devices, and cosmetics as the department deems necessary in the interest of public health and the protection of the consumer against fraud. Nothing in this section shall be construed to prohibit the department from collecting, reporting, and illustrating the results of the investigations of the department.

History: En. Sec. 23, Ch. 307, L. 1967; R.C.M. 1947, 27-723.

50-31-106. Inspections and taking of samples authorized. (1) The department or its authorized agents have free access at all reasonable hours to any factory, warehouse, or establishment in which foods, drugs, devices, or cosmetics are manufactured, processed, packed, or held for introduction into commerce or to any vehicle being used to transport or hold the foods, drugs, devices, or cosmetics in commerce, for the purpose of:

(a) inspecting the factory, warehouse, establishment, or vehicle to determine if any of the provisions of this chapter are being violated; and

(b) securing samples or specimens of any food, drug, device, or cosmetic after paying or offering to pay for the sample.

(2) The department shall make or cause to be made examinations of samples secured under the provisions of this section to determine whether or not any provision of this chapter is being violated.

History: En. Sec. 22, Ch. 307, L. 1967; amd. Sec. 3, Ch. 187, L. 1977; R.C.M. 1947, 27-722.

50-31-107. False or misleading representations. (1) An advertisement of a food, drug, device, or cosmetic shall be deemed to be false if it is false or misleading in any particular.

(2) If an article is alleged to be misbranded because the labeling is misleading or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading there shall be taken into account not only representations made or suggested by statement, word, design, device, sound, or a combination of these but also the extent to which the labeling or advertisement fails to reveal facts material in the light of the representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement or under conditions of use as are customary or usual.

History: (1)En. Sec. 20, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; Sec. 27-720, R.C.M. 1947; (2)En. Sec. 2, Ch. 307, L. 1967; amd. Sec. 1, Ch. 171, L. 1971; amd. Sec. 1, Ch. 114, L. 1974; amd. Sec. 3, Ch. 349, L. 1974; Sec. 27-702, R.C.M. 1947; R.C.M. 1947, 27-702(l), 27-720(a).

50-31-108. Regulations concerning additives. (1) The department, upon its own motion or upon the petition of any interested party requesting that such a regulation be established, whenever public health or other considerations in the state so require, is authorized to adopt, amend, or repeal regulations, whether or not in accordance with regulations promulgated under the federal act, prescribing tolerances for any added poisonous or deleterious substances for food additives, for pesticide chemicals in or on raw agricultural commodities, or for color additives, including but not limited to zero tolerances and exemptions from tolerances in the case of pesticide chemicals in or on raw agricultural commodities and prescribing the conditions under which a food additive or a color additive may be safely used and exemptions where such food additive or color additive is to be used solely for investigational or experimental purposes.

(2) It shall be incumbent upon such petitioner to establish by data submitted to the department that a necessity exists for such regulation and that its effect will not be detrimental to the public health. If the data furnished by the petitioner is not sufficient to allow the department to determine whether such regulation should be promulgated, the department may require additional data to be submitted and failure to comply with the request shall be sufficient grounds to deny the request.

(3) In adopting, amending, or repealing regulations relating to such substances the department shall consider among other relevant factors the following which the petitioner, if any, shall furnish:

(a) the name and all pertinent information concerning such substance including, where available, its chemical identity and composition, a statement of the conditions of the proposed use, including directions, recommendations, and suggestions and including specimens of proposed labeling, all relevant data bearing on the physical or other technical effect and the quantity required to produce such effect;

(b) the probable composition of or other relevant exposure from the article and of any substance formed in or on a food, drug, or cosmetic resulting from the use of such substance;

(c) the probable consumption of such substance in the diet of man and animals taking into account any chemically or pharmacologically related substance in such diet;

(d) safety factors which, in the opinion of experts qualified by scientific training and experience to evaluate the safety of such substances for the use or uses for which they are proposed to be used, are generally recognized as appropriate for the use of animal experimentation data;

(e) the availability of any needed practicable methods of analysis for determining the identity and quantity of:

(i) such substance in or on an article;

(ii) any substance formed in or on such article because of the use of such substance; and

(iii) the pure substance and all intermediates and impurities; and

(f) facts supporting a contention that the proposed use of such substance will serve a useful purpose.

History: En. Sec. 13, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-713(b).

50-31-109. Use of additives. Any added poisonous or deleterious substance, any food additive, any pesticide chemical in or on a raw agricultural commodity, or any color additive shall, with respect to any particular use or intended use, be deemed unsafe for the purpose of application of 50-31-202(2) with respect to any food, 50-31-305(1) through (5) with respect to any drug or device, or 50-31-401(1) with respect to any cosmetic unless there is in effect a regulation pursuant to 50-31-108 limiting the quantity of such substance and the use or intended use of such substance conforms to the terms prescribed by such regulation. While such regulation relating to such substance is in effect, a food, drug, or cosmetic shall not by reason of bearing or containing such substance in accordance with the regulation be considered adulterated within the meaning of 50-31-202(1), 50-31-305(1) through (5), or 50-31-401(1).

History: En. Sec. 13, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-713(a).

50-31-110. Certain agricultural chemicals not color additives. Subsections (3) and (4) of 50-31-103 do not apply to a pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest.

History: En. Sec. 2, Ch. 307, L. 1967; amd. Sec. 1, Ch. 171, L. 1971; amd. Sec. 1, Ch. 114, L. 1974; amd. Sec. 3, Ch. 349, L. 1974; R.C.M. 1947, 27-702(u)(3); amd. Sec. 3, Ch. 361, L. 1981.

Compiler's Comments

1981 Amendment: Changed references to "Subsections (2) and (3)" of 50-31-103 to "Subsections (3) and (4)".

50-31-111. When labeling requirement complied with. A requirement made by or under authority of this chapter that a word, statement, or other information shall appear on the label is not complied with unless the word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of the article or is easily legible through the outside container or wrapper.

History: En. Sec. 2, Ch. 307, L. 1967; amd. Sec. 1, Ch. 171, L. 1971; amd. Sec. 1, Ch. 114, L. 1974; amd. Sec. 3, Ch. 349, L. 1974; R.C.M. 1947, 27-702(i)(part); amd. Sec. 9, Ch. 37, L. 1979.

Part 2

Food

50-31-201. Department authorized to adopt food standards. (1) Whenever in the judgment of the department such action will promote honesty and fair dealing in the interest of consumers, the department shall promulgate regulations fixing and establishing for any food or class of food a reasonable definition and standard of identity, standard of quality, and/or fill of container.

(2) In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the department shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients which shall be named on the label.

(3) The definitions and standards so promulgated shall conform so far as practicable to the definitions and standards promulgated under authority of the federal act, or the department may promulgate by reference the definitions and standards promulgated under authority of the federal act.

History: En. Sec. 9, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-709.

50-31-202. When food adulterated. A food shall be deemed to be adulterated if:

(1) it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such food shall not be considered adulterated under this subsection if the quantity of such substance in such food does not ordinarily render it injurious to health;

(2) it bears or contains any added poisonous or added deleterious substance, other than one which is:

(a) a pesticide chemical in or on a raw agricultural commodity;

(b) a food additive; or

(c) a color additive, which is unsafe within the meaning of 50-31-109;

(3) it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of section 408(a) of the federal act as amended;

(4) it is or it bears or contains any food additive which is unsafe within the meaning of section 409 of the federal act as amended; provided that where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or tolerance prescribed under section 408 of the federal act and such raw agricultural commodity has

been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed food shall, notwithstanding the provisions of 50-31-108, 50-31-109, and subsection (4) of this section, not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of such residue in the processed food when ready to eat is not greater than the tolerance prescribed for the raw agricultural commodity;

(5) it consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance or if it is otherwise unfit for food;

(6) it has been produced, prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth or whereby it may have been rendered diseased, unwholesome, or injurious to health;

(7) it is the product of a diseased animal or an animal which has died otherwise than by slaughter or that has been fed upon the uncooked offal from a slaughterhouse;

(8) its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health;

(9) any valuable constituent has been in whole or in part omitted or abstracted therefrom;

(10) any substance has been substituted wholly or in part therefor;

(11) damage or inferiority has been concealed in any manner;

(12) any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, reduce its quality or strength, or make it appear better or of greater value than it is;

(13) it is confectionery and it bears or contains any alcohol or nonnutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of .4%, harmless natural wax not in excess of .4%, or harmless natural gum and pectin; provided that this paragraph shall not apply to any confectionery by reason of its containing less than .5% by volume of alcohol derived solely from the use of flavoring extracts or to any chewing gum by reason of its containing harmless nonnutritive masticatory substances;

(14) it is or bears or contains any color additive which is unsafe within the meaning of the federal act.

History: **En. Sec. 10, Ch. 307, L. 1967; R.C.M. 1947, 27-710.**

50-31-203. When food misbranded. A food shall be deemed to be misbranded if:

(1) its labeling is false or misleading in any particular;

(2) it is offered for sale under the name of another food;

(3) it is an imitation of another food for which a definition and standard of identity has been prescribed by regulations as provided by 50-31-201 or if it is an imitation of another food that is not subject to subsection (7) of this section, unless its label bears in type of uniform size and prominence the word imitation and, immediately thereafter, the name of the food imitated;

(4) its container is so made, formed, or filled as to be misleading;

(5) in package form, unless it bears a label containing:

(a) the name and place of business of the manufacturer, packer, or distributor;

(b) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided that reasonable variations shall be permitted and exemptions as to small packages shall be established by regulations prescribed by the department;

(6) any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(7) it purports to be or is represented as a food for which a definition and standard of identity have been prescribed by regulations as provided by 50-31-201, unless:

(a) it conforms to such definition and standard; and

(b) its label bears the name of the food specified in the definition and standard and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food;

(8) it purports to be or is represented as:

(a) a food for which a standard of quality has been prescribed by regulations as provided by 50-31-201 and its quality falls below such standard, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard; or

(b) a food for which a standard or standards of fill of container have been prescribed by regulation as provided by 50-31-201 and it falls below the standard of fill of container applicable, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard;

(9) it is not subject to the provisions of subsection (7) of this section unless it bears labeling clearly giving:

(a) the common or usual name of the food, if any there be; and

(b) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings without naming each; provided that to the extent that compliance with the requirements of subsection (9)(b) is impractical or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the department; and provided further that the requirements of subsection (9)(b) shall not apply to food products which are packaged at the direction of purchasers at retail at the time of sale, the ingredients of which are disclosed to the purchasers by other means in accordance with regulations promulgated by the department;

(10) it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the department determines to be and by regulations prescribes as necessary in order to fully inform purchasers as to its value for such uses;

(11) it bears or contains any artificial flavoring, artificial coloring, or chemical preservative unless it bears labeling stating that fact; provided that the

extent that compliance with the requirements of this subsection is impracticable, exemptions shall be established by regulations promulgated by the department. Butter, cheese, ice cream, and frozen desserts as defined in 81-22-101 shall be exempt from label statements for artificial flavoring and artificial coloring.

(12) it is a product intended as an ingredient of another food and when used according to the directions of the purveyor will result in the final food product being adulterated or misbranded;

(13) it is a color additive, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive prescribed under the provisions of the federal act.

History: **En. Sec. 11, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-711.**

50-31-204. Labeling requirements for products in semblance of honey or containing honey. (1) Any product sold in semblance of honey which is a blend or mixture of honey and other ingredients must be labeled in such a way that the name of the main ingredient added to the honey will be printed so that it will be as prominent and conspicuous as the word "honey". The word "imitation" may not be used in the name of a product which is in semblance of honey whether or not it contains any honey.

(2) The label for a product which is not in semblance of honey and which contains honey may include the word "honey" in the name of the product. The relative position of the word "honey" in the product name and in the list of ingredients, when required, shall be determined by its prominence as an ingredient in the product.

History: **En. Sec. 3, Ch. 307, L. 1967; amd. Sec. 2, Ch. 171, L. 1971; amd. Sec. 2, Ch. 114, L. 1974; amd. Sec. 9, Ch. 403, L. 1977; R.C.M. 1947, 27-703(part).**

50-31-205. Permits for manufacture, processing, and packing of foods. (1) Whenever the department finds after investigation that the distribution in Montana of any class of food may, by reason of contamination with microorganisms during manufacture, processing, or packing thereof in any locality, be injurious to health and that such injurious nature cannot be adequately determined after such articles have entered commerce, it then, and in such case only, shall promulgate regulations providing for the issuance to manufacturers, processors, or packers of such class of food in such locality of permits to which shall be attached such conditions governing the manufacture, processing, or packing of such class of food for such temporary period of time as may be necessary to protect the public health.

(2) After the effective date of such regulations and during such temporary period, no person shall introduce or deliver for introduction into commerce any such food manufactured, processed, or packed by any such manufacturer, processor, or packer unless such manufacturer, processor, or packer holds a permit issued by the department as provided by such regulations.

History: **En. Sec. 12, Ch. 307, L. 1967; R.C.M. 1947, 27-712(a).**

50-31-206. Permitholder to allow inspections. Any officer or employee duly designated by the department shall have access to any factory or establishment, the operator of which holds a permit from the department, for the purpose of ascertaining whether or not the conditions of the permit are being complied with, and denial of access for such inspection shall be ground for suspension of the permit until such access is freely given by the operator.

History: **En. Sec. 12, Ch. 307, L. 1967; R.C.M. 1947, 27-712(c).**

50-31-207. Suspension of permit. The department is authorized to suspend immediately upon notice any permit issued under authority of 50-31-205 if it is found that any of the conditions of the permit have been violated. The holder of a permit so suspended shall be privileged at any time to apply for the reinstatement of such permit, and the department shall, immediately after prompt hearing and inspection of the establishment, reinstate such permit if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit as originally issued or as amended.

History: **En. Sec. 12, Ch. 307, L. 1967; R.C.M. 1947, 27-712(b).**

50-31-208. Sale of hamburger and beef patty mix. (1) No food service establishment or retail establishment may use the terms "hamburger", "burger", or other similar term in any advertisement or menu to refer to any beef patty mix. A food service establishment or retail establishment selling or serving beef patty mix may refer to the product as "beef patty mix" or by any other term which accurately informs the customer of the nature of the food product which he is sold or served.

(2) If beef patty mix is sold or served in a food service establishment or retail establishment, a list of ingredients must appear on the menu or label, or, if there is no menu or label, on a placard as follows:

(a) The term "beef patty mix" or any other term which accurately informs the customer of the nature of the food product and its ingredients must be included.

(b) The ingredients must be listed in descending order of predominance by weight.

(c) If there is no menu or label, the lettering on the placard must be at least 1 inch in height (72-point letters) in boldface and in colors that contrast with the placard.

(d) The placard must be posted in a permanent place, conspicuous to the customer, in each room or area where food is served or sold at retail.

(3) If hamburger or ground beef is sold in a retail establishment, the grade, as defined in 50-31-103(16), and the maximum fat content must appear on each displayed package, or if the product is not packaged for display, on a placard. If a placard is used, it must satisfy the requirements of subsections (2)(c) and (2)(d) of this section. The provisions of this subsection do not apply to the service of prepared hamburger or ground beef at a food service establishment.

History: **En. Sec. 5, Ch. 456, L. 1979; amd. Sec. 2, Ch. 361, L. 1981.**

Compiler's Comments

1981 Amendment: Inserted "or retail establishment" after "food service establishment" throughout (1) and (2); substituted "beef patty mix" for "imitation hamburger" throughout (1) and (2); inserted "or label" after "menu" throughout (2); deleted "wallboard or" before "placard" in (2)(c) and (2)(d); added "or sold at retail" at the end of (2)(d); added subsection (3).

Part 3

Drugs and Devices

50-31-301. *(Temporary)* **Definitions.** As used in this part, the following definitions apply:

(1) "Established name", with respect to a drug or ingredient thereof, means:

(a) the applicable official name designated pursuant to section 508 of the federal act;

(b) if there is no such name and such drug or such ingredient is an article recognized in an official compendium, then the official title thereof in such compendium; or provided that, where subsection (1)(b) of this section applies to an article recognized in the United States Pharmacopoeia and in the Homeopathic Pharmacopoeia under different official titles, the official title used in the United States Pharmacopoeia shall apply unless it is labeled and offered for sale as a homeopathic drug, in which case the official title used in the Homeopathic Pharmacopoeia shall apply;

(c) if neither subsection (1)(a) nor (1)(b) of this section applies, then the common or usual name, if any, of such drug or of such ingredient.

(2) "Antibiotic drug" means any drug intended for use by man containing any quantity of any chemical substance which is produced by a microorganism and which has the capacity to inhibit or destroy microorganisms in dilute solution (including the chemically synthesized equivalent of any such substance).

(3) "Manufacturer" means a person who mixed the final ingredients and prepared the final drug product.

50-31-301. *(Effective January 1, 1983)* **Definitions.** As used in this part, the following definitions apply:

(1) "Established name", with respect to a drug or ingredient thereof, means:

(a) the applicable official name designated pursuant to section 508 of the federal act;

(b) if there is no such name and such drug or such ingredient is an article recognized in an official compendium, then the official title thereof in such compendium; or provided that, where subsection (1)(b) of this section applies to an article recognized in the United States Pharmacopoeia under different official titles, the official title used in the United States Pharmacopoeia shall apply;

(c) if neither subsection (1)(a) nor (1)(b) of this section applies, then the common or usual name, if any, of such drug or of such ingredient.

(2) "Antibiotic drug" means any drug intended for use by man containing any quantity of any chemical substance which is produced by a microorganism and which has the capacity to inhibit or destroy microorganisms in dilute solution (including the chemically synthesized equivalent of any such substance).

(3) "Manufacturer" means a person who mixed the final ingredients and prepared the final drug product.

(4) "Code imprint" means a series of letters or numbers assigned by the manufacturer or distributor to a specific drug, marks or monograms unique to the manufacturer or distributor of the drug, or both.

(5) "Distributor" means a person who distributes for resale a drug in solid dosage form under his own label whether or not he is the manufacturer of the drug.

(6) "Solid dosage form" means capsules or tablets intended for oral use.

(7) "Legend drug" means any drug defined by section 503(b) of the federal Food, Drug and Cosmetic Act, as amended on January 15, 1980, under which its label is required to bear the statement: "Caution: Federal law prohibits dispensing without prescription."

History: **En. Sec. 15, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-715(part); amd. Sec. 1, Ch. 403, L. 1979; amd. Sec. 1, Ch. 95, L. 1981.**

Compiler's Comments

1981 Amendment: Deleted "and in the Homeopathic Pharmacopoeia" after "in the United States Pharmacopoeia" in (1)(b); deleted "unless it is labeled and offered for sale as a homeopathic drug, in which case the official title used in the Homeopathic Pharmacopoeia shall apply" at the end of (1)(b); added subsections (4) through (7).

Obsolete Language: The language "under different official titles" in (1)(b) was meaningful when there were two official compendiums cited, but it became obsolete with deletion of reference to the Homeopathic Pharmacopoeia.

Effective Date: Section 7, Ch. 95, L. 1981, provided: "This act is effective January 1, 1983."

50-31-302. Antiseptics considered to be germicides. The representation of a drug in its labeling or advertisement as an antiseptic is considered to be a representation that it is a germicide except in the case of a drug purporting to be or represented as an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or other use which involves prolonged contact with the body.

History: **En. Sec. 2, Ch. 307, L. 1967; amd. Sec. 1, Ch. 171, L. 1971; amd. Sec. 1, Ch. 114, L. 1974; amd. Sec. 3, Ch. 349, L. 1974; R.C.M. 1947, 27-702(n).**

50-31-303. Certain drug advertisements considered false. (1) For the purpose of this chapter, the advertisement of a drug or device representing it to have any effect in albuminuria, appendicitis, arteriosclerosis, blood poison, bone disease, Bright's disease, cancer, carbuncles, cholecystitis, diabetes, diphtheria, dropsy, erysipelas, gallstones, heart and vascular diseases, high blood pressure, mastoiditis, measles, meningitis, mumps, nephritis, otitis media, paralysis, pneumonia, poliomyelitis (infantile paralysis), prostate gland disorders, pyelitis, scarlet fever, sexual impotence, sinus infection, smallpox, tuberculosis, tumors, typhoid, uremia, or venereal disease shall also be deemed to be false, except that no advertisement not in violation of 50-31-107(1) shall be deemed to be false under this section if it is disseminated only to members of the medical, dental, or veterinary professions or appears only in the scientific periodicals of these professions or is disseminated only for the purpose of public health education by persons not commercially interested, directly or indirectly, in the sale of such drugs or devices.

(2) Whenever the department determines that an advance in medical science has made any type of self-medication safe as to any of the diseases named above, the department shall by regulation authorize the advertisement of drugs having curative or therapeutic effect for such disease, subject to

such conditions and restrictions as the department may deem necessary in the interests of public health.

(3) This section shall not be construed as indicating that self-medication for diseases other than those named herein is safe or efficacious.

History: En. Sec. 20, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-720(b); amd. Sec. 10, Ch. 37, L. 1979.

50-31-304. Certain drugs and devices exempt from labeling requirements of chapter. Drugs and devices which are, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at establishments other than those where originally processed or packed shall be exempt from any labeling or packaging requirements of this chapter, provided that such drugs and devices are being delivered, manufactured, processed, labeled, repacked, or otherwise held in compliance with regulations issued by the department or under the federal act.

History: En. Sec. 15, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-715(part).

50-31-305. When drug or device adulterated. A drug or device shall be deemed to be adulterated if it:

(1) consists in whole or in part of any filthy, putrid, or decomposed substance;

(2) has been produced, prepared, packed, or held under unsanitary conditions whereby it may have been contaminated with filth or rendered injurious to health;

(3) is a drug and the methods used in or the facilities or controls used for its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with current good manufacturing practice to assure that such drug meets the requirements of this chapter as to safety and has the identity and strength and meets the quality and purity characteristics which it purports or is represented to possess;

(4) is a drug and its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health;

(5) is a drug and it bears or contains, for purposes of coloring only, a color additive which is unsafe within the meaning of the federal act or it is a color additive, the intended use of which in or on drugs is for purposes of coloring only, and is unsafe within the meaning of the federal act;

(6) purports to be or is represented as a drug, the name of which is recognized in an official compendium, and its strength differs from or its quality or purity falls below the standard set forth in such compendium. Such determination as to strength, quality, or purity shall be made in accordance with the tests or methods of assay set forth in such compendium or, in the absence of or inadequacy of such tests or methods of assay, those prescribed under authority of the federal act. No drug defined in an official compendium shall be deemed to be adulterated under this subsection because it differs from the standard of strength, quality, or purity therefor set forth in such compendium if its difference in strength, quality, or purity from such standard is plainly stated on its label.

(7) is not subject to the provisions of subsection (6) of this section and its strength differs from or its purity or quality falls below that which it purports or is represented to possess; or

(8) is a drug and any substance has been:

(a) mixed or packed therewith so as to reduce its quality or strength; or

(b) substituted wholly or in part therefor.

History: **En. Sec. 14, Ch. 307, L. 1967; R.C.M. 1947, 27-714; amd. Sec. 11, Ch. 37, L. 1979.**

50-31-306. When drug or device misbranded. (1) A drug or device shall be deemed to be misbranded:

(a) if its labeling is false or misleading in any particular;

(b) if in package form unless it bears a label containing:

(i) the name and place of business of the manufacturer, packer, or distributor, except that a prescription drug must contain the name and place of business of the manufacturer as well as the packer or distributor; and

(ii) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided that reasonable variation shall be permitted and exemptions as to small packages shall be allowed in accordance with regulations prescribed by the department or issued under the federal act;

(c) if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(d) if it is for use by man and contains any quantity of the narcotic or hypnotic substance alpha-eucaine, barbituric acid, beta-eucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marihuana, morphine, opium, paraldehyde, peyote, sulphonmethane, or any chemical derivative of such substance which, after investigation, has been found to be and designated as habit-forming by regulations issued by the department under this chapter or by regulations issued pursuant to section 502(d) of the federal act, unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning—May be habit-forming";

(e) if it is a drug, unless its label bears to the exclusion of any other nonproprietary name (except the applicable systematic chemical name or the chemical formula):

(i) the established name (as defined in 50-31-301(1)) of the drug, if such there be; and

(ii) in case it is fabricated from two or more ingredients, the established name and quantity of each active ingredient, including the kind and quantity or proportion of any alcohol and also including, whether active or not, the established name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances contained therein; provided that the requirement for stating the quantity of the active ingredients, other than the quantity of those specifically named in this subsection (1)(e)(ii), shall apply only to prescription drugs; provided further that, to the extent that compliance with the requirements of this subsection (1)(e)(ii) is impracticable, exemptions shall be allowed under regulations promulgated by the department or under the federal act;

(f) unless its labeling bears:

(i) adequate directions for use; provided that, where any requirement of this subsection (1)(f)(i), as applied to any drug or device, is not necessary for the protection of the public health, the department shall promulgate regulations exempting such drug or device from such requirements; provided further that articles exempted under regulations issued under section 502(f) of the federal act may also be exempt; and

(ii) such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form as are necessary for the protection of users;

(g) if it purports to be a drug, the name of which is recognized in an official compendium unless it is packaged and labeled as prescribed therein, provided that the method of packing may be modified with the consent of the department or if consent is obtained under the federal act. In the event of inconsistency between the requirements of this subsection and those of subsection (e) as to the name by which the drug or its ingredients shall be designated, the requirements of subsection (e) shall prevail.

(h) if it has been found by the department or under the federal act to be a drug liable to deterioration, unless it is packaged in such form and manner and its label bears a statement of such precautions as the regulations issued by the department or under the federal act require as necessary for the protection of public health. No such regulation shall be established for any drug recognized in an official compendium until the department shall have informed the appropriate body charged with the revision of such compendium of the need for such packaging or labeling requirements and such body shall have failed within a reasonable time to prescribe such requirements.

(i) if it is a drug and its container is so made, formed, or filled as to be misleading;

(j) if it is an imitation of another drug;

(k) if it is offered for sale under the name of another drug;

(l) if it is dangerous to health when used in the dosage or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof;

(m) if it is, purports to be, or is represented as a drug composed wholly or partly of insulin, unless:

(i) it is from a batch with respect to which a certificate or release has been issued pursuant to section 506 of the federal act; and

(ii) such certificate or release is in effect with respect to such drug;

(n) if it is, purports to be, or is represented as a drug composed wholly or partly of any kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, bacitracin, any other antibiotic drug, or any derivative thereof unless:

(i) it is from a batch with respect to which a certificate or release has been issued pursuant to section 507 of the federal act; and

(ii) such certificate or release is in effect with respect to such drug; provided that subsection (1)(n) shall not apply to any drug or class of drugs exempted by regulations promulgated under section 507(c) or (d) of the federal act;

(o) if it is a color additive, the intended use of which in or on drugs is for the purpose of coloring only, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive prescribed under the provisions of 50-31-108 or of the federal act;

(p) in the case of any prescription drug distributed or offered for sale in this state, unless the manufacturer, packer, or distributor thereof includes in all advertisements and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to that drug a true statement of:

(i) the established name, as defined in 50-31-301(1);

(ii) the formula showing quantitatively each ingredient of such drug to the extent required for labels under section 502(e) of the federal act; and

(iii) such other information in brief summary relating to side effects, contraindications, and effectiveness as shall be required in regulations issued under the federal act; or

(q) if a trademark, trade name, or other identifying mark, imprint, or device or another or any likeness of the foregoing has been placed thereon or upon its container with intent to defraud.

(2) A drug which is subject to 50-31-307 shall be deemed to be misbranded if, at any time prior to dispensing, its label fails to bear the statement "Caution: Federal Law Prohibits Dispensing Without Prescription", or "Caution: State Law Prohibits Dispensing Without Prescription". A drug to which 50-31-307 does not apply shall be deemed to be misbranded if, at any time prior to dispensing, its label bears the caution statement quoted in the preceding sentence.

History: En. Secs. 15, 16, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-715(part), 27-716(d); amd. Sec. 12, Ch. 37, L. 1979; amd. Sec. 2, Ch. 403, L. 1979.

50-31-307. Dispensing of prescription drugs. (1) A drug intended for use by man which:

(a) is a habit-forming drug to which 50-31-306(1)(d) applies;

(b) because of its toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer such drug; or

(c) is limited by an approved application under section 505 of the federal act or 50-31-311 to use under the professional supervision of a practitioner licensed by law to administer such drug shall be dispensed only:

(i) upon a written prescription of a practitioner licensed by law to administer such drug;

(ii) upon an oral prescription of such practitioner which is reduced promptly to writing and filed by the pharmacist; or

(iii) by refilling any such written or oral prescription if such refilling is authorized by the prescriber either in the original prescription or by oral order which is reduced promptly to writing and filed by the pharmacist.

(2) The act of dispensing a drug contrary to the provisions of this section shall be deemed to be an act which results in a drug being misbranded while held for sale.

History: **En. Sec. 16, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-716(a).**

50-31-308. Prescription drugs exempt from certain provisions of chapter. Any drug dispensed by filling or refilling a written or oral prescription of a practitioner licensed by law to administer such drug shall be exempt from the requirements of 50-31-306, except subsections (1)(a), (1)(j), (1)(k), (1)(m), (1)(n), and the packaging requirements of subsections (1)(g) and (1)(h), if the drug bears a label containing the name and address of the dispenser, the serial number and date of the prescription or of its filling, the name of the prescriber, and if stated in the prescription, the name of the patient and the directions for use and cautionary statements, if any, contained in such prescription. This exemption shall not apply to any drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail or to a drug dispensed in violation of 50-31-307.

History: **En. Sec. 16, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-716(b).**

50-31-309. Removal of drugs from prescription requirement. The department may by regulation remove drugs subject to 50-31-306(1)(d) and 50-31-311 from the requirements of 50-31-307 when such requirements are not necessary for the protection of the public health. Drugs removed from the prescription requirements of the federal act by regulations issued thereunder may also, by regulations issued by the department, be removed from the requirements of 50-31-307.

History: **En. Sec. 16, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-716(c).**

50-31-310. Narcotic and marihuana laws not affected. Nothing in 50-31-306(2), 50-31-307, 50-31-308, or 50-31-309 shall be construed to relieve any person from any requirement prescribed by or under authority of law with respect to drugs now included or which may hereafter be included within the classifications of narcotic drugs or marihuana, as defined in the applicable federal and state laws relating to narcotic drugs and marihuana.

History: **En. Sec. 16, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-716(e).**

50-31-311. New drug application required. (1) Except as provided in Title 50, chapter 42, no person may sell, deliver, offer for sale, hold for sale, or give away any new drug unless:

(a) an application with respect thereto has been approved and said approval has not been withdrawn under section 505 of the federal act; or

(b) when not subject to the federal act, such drug has been tested and has been found to be safe for use and effective in use under the conditions prescribed, recommended, or suggested in the labeling thereof and, prior to selling or offering for sale such drug, there has been filed with the department an application setting forth:

(i) full reports of investigations which have been made to show whether or not such drug is safe for use and whether such drug is effective in use;

(ii) a full list of the articles used as components of such drug;

(iii) a full statement of the composition of such drug;

(iv) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drug;

(v) such samples of such drug and of the articles used as components thereof as the department may require; and

(vi) specimens of the labeling proposed to be used for such drug.

(2) An application provided for in subsection (1)(b) shall become effective on the 180th day after the filing thereof, except that, if the department finds, after due notice to the applicant and giving him an opportunity for a hearing, that the drug is not safe or not effective for use under the conditions prescribed, recommended, or suggested in the proposed labeling thereof, it shall, prior to the effective date of the application, issue an order refusing to permit the application to become effective.

(3) An order refusing to permit an application under this section to become effective may be revoked by the department.

History: **En. Sec. 17, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-717(a) thru (c); amd. Sec. 1, Ch. 333, L. 1981.**

Compiler's Comments

1981 Amendment: Inserted "Except as provided in Title 50, chapter 42" at the beginning of (1); substituted "may" for "shall" in the first sentence of (1).

50-31-312. Exemptions from new drug application requirement. (1) Section 50-31-311 shall not apply to:

(a) a drug intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety and effectiveness of drugs, provided the drug is plainly labeled in compliance with regulations issued by the department or pursuant to section 505(i) or 507(d) of the federal act;

(b) a drug sold in this state at any time prior to the enactment of this chapter or introduced into interstate commerce at any time prior to the enactment of the federal act;

(c) any drug which is licensed under the Virus, Serum, and Toxin Act of July 1, 1902 (U.S.C. 1958 ed. Title 42, chapter 6A, sec. 262); or

(d) any drug which is subject to 50-31-306(1)(n).

(2) The provisions of 50-31-103(21) shall not apply to any drug, when such drug is intended solely for use under conditions prescribed, recommended, or suggested in labeling with respect to such drug, which on October 9, 1962, or on the date immediately preceding July 1, 1967:

(a) was commercially sold or used in this state or in the United States;

(b) was not a new drug as defined by 50-31-103(21) as then in force; and

(c) was not covered by an effective application under 50-31-311 or under section 505 of the federal act.

History: **En. Sec. 17, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-717(d), (e); amd. Sec. 2, Ch. 456, L. 1979.**

50-31-313. *(Effective January 1, 1983)* **Code imprint required on legend drugs.** No legend drug in solid dosage form may be manufactured or distributed in this state unless it is clearly marked or imprinted with a code imprint identifying the drug and the manufacturer or distributor of the drug.

History: En. Sec. 2, Ch. 95, L. 1981.

Compiler's Comments

Codification Instruction: Section 6, Ch. 95, L. 1981, provided: "Sections 2 through 4 [50-31-313 through 50-31-315] are intended to be codified as an integral part of Title 50, chapter 31, part 3, and the provisions of Title 50, chapter 31, parts 3 and 5, apply to sections 2 through 4."

Effective Date: Section 7, Ch. 95, L. 1981, provided: "This act is effective January 1, 1983."

50-31-314. *(Effective January 1, 1983)* **Exemptions from code imprint requirement.** The board of pharmacists may grant exemptions from the requirements of 50-31-313 and 50-31-315 upon a showing by a drug manufacturer or distributor that size, physical characteristics, or other compelling reasons render application of a code imprint on a legend drug subject to the provisions of 50-31-313 impractical or impossible. Any exemption granted must be included in the list required by 50-31-315 and must describe the physical characteristics and type of drug covered by the exemption.

History: En. Sec. 3, Ch. 95, L. 1981.

Compiler's Comments

Effective Date: Section 7, Ch. 95, L. 1981, provided: "This act is effective January 1, 1983."

50-31-315. *(Effective January 1, 1983)* **List of code imprints to be provided.** Upon request of the board of pharmacists, all manufacturers and distributors of legend drugs in solid dosage form who produce or distribute legend drugs in Montana must provide and keep current a list of those drugs, which list identifies the manufacturer and the specific type of each drug by code imprint.

History: En. Sec. 4, Ch. 95, L. 1981.

Compiler's Comments

Effective Date: Section 7, Ch. 95, L. 1981, provided: "This act is effective January 1, 1983."

Part 4

Cosmetics

50-31-401. When cosmetic adulterated. A cosmetic shall be deemed to be adulterated if:

(1) it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual;

(2) it consists in whole or in part of any filthy, putrid, or decomposed substance;

(3) it has been produced, prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth or rendered injurious to health;

(4) its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(5) it is not a hair dye and it is or it bears or contains a color additive which is unsafe within the meaning of the federal act.

History: En. Sec. 18, Ch. 307, L. 1967; R.C.M. 1947, 27-718(part).

50-31-402. When cosmetic misbranded. A cosmetic shall be deemed to be misbranded if:

(1) its labeling is false or misleading in any particular;

(2) in package form unless it bears a label containing:

(a) the name and place of business of the manufacturer, packer, or distributor; and

(b) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided that reasonable variations shall be permitted and exemptions as to small packages shall be established by regulations prescribed by the department;

(3) any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(4) its container is so made, formed, or filled as to be misleading;

(5) it is a color additive, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive prescribed under the provisions of the federal act.

History: En. Sec. 19, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-719(part).

50-31-403. Exceptions for hair dyes. (1) Section 50-31-401 shall not apply to coal tar hair dye, the label of which bears the following legend conspicuously displayed thereon: "Caution—This product contains ingredients which may cause skin irritation on certain individuals, and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness", and the labeling of which bears adequate directions for such preliminary testing.

(2) Subsection 50-31-402(5) shall not apply to packages of color additives which, with respect to their use for cosmetics, are marketed and intended for use only in or on hair dyes (as defined in 50-31-404).

History: (1)En. Sec. 18, Ch. 307, L. 1967; Sec. 27-718, R.C.M. 1947; (2)En. Sec. 19, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; Sec. 27-719, R.C.M. 1947; R.C.M. 1947, 27-718(part), 27-719(part).

50-31-404. Term hair dye not to include eyelash or eyebrow dyes. For the purpose of 50-31-401(5) and 50-31-403, the term "hair dye" shall not include eyelash dyes or eyebrow dyes.

History: En. Sec. 18, Ch. 307, L. 1967; R.C.M. 1947, 27-718(part).

Part 5

Prohibited Acts, Penalties, and Remedies

50-31-501. Prohibited acts. The following acts and the causing thereof within the state of Montana are hereby prohibited:

(1) the manufacture, sale or delivery, holding, or offering for sale of any food, drug, device, or cosmetic that is adulterated or misbranded;

(2) the adulteration or misbranding of any food, drug, device, or cosmetic;

(3) the receipt in commerce of any food, drug, device, or cosmetic that is adulterated or misbranded and the delivery or proffered delivery thereof for pay or otherwise;

(4) the sale, delivery for sale, holding for sale, or offering for sale of any article in violation of 50-31-205 or 50-31-311;

(5) the dissemination of any false advertisement;

(6) the refusal to permit entry or inspection or to permit the taking of a sample, as authorized by 50-31-106;

(7) the giving of a guaranty or undertaking which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by and containing the name and address of the person residing in the state of Montana from whom he received in good faith the food, drug, device, or cosmetic;

(8) the removal or disposal of a detained or embargoed article in violation of 50-31-509;

(9) the alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of or the doing of any other act with respect to a food, drug, device, or cosmetic if such act is done while such article is held for sale and results in such article being adulterated or misbranded;

(10) forging, counterfeiting, simulating, or falsely representing or, without proper authority, using any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated under the provisions of this chapter or of the federal act;

(11) the using on the labeling of any drug or in any advertisement relating to such drug of any representation or suggestion that an application with respect to such drug is effective under 50-31-311 or that such drug complies with the provisions of 50-31-311;

(12) in the case of a prescription drug distributed or offered for sale in this state, the failure of the manufacturer, packer, or distributor thereof to maintain for transmittal or to transmit to any practitioner licensed by applicable law to administer such drug who makes written request for information as to such drug true and correct copies of all printed matter which is required to be included in any package in which that drug is distributed or sold or such other printed matter as is approved under the federal act. Nothing in this subsection shall be construed to exempt any person from any labeling requirement imposed by or under other provisions of this chapter.

(13) placing or causing to be placed upon any drug or device or container thereof, with intent to defraud, the trade name, other identifying mark, or imprint of another or any likeness of any of the foregoing;

(14) selling, dispensing, disposing of, or causing to be sold, dispensed, or disposed of or concealing or keeping in possession, control, or custody, with intent to sell, dispense, or dispose of, any drug, device, or any container thereof with knowledge that the trade name, other identifying mark, or imprint of another or any likeness of any of the foregoing has been placed thereon in a manner prohibited by subsection (13) hereof;

(15) making, selling, disposing of, or causing to be made, sold, or disposed of or keeping in possession, control, or custody or concealing, with intent to defraud, any punch, die, plate, or other thing designed to print, imprint, or reproduce that trade name, other identifying mark, or imprint of another or any likeness of any of the foregoing upon any drug, device, or container thereof;

(16) the using by any person to his own advantage or revealing, other than to the state board, officers or employees of the department, or the courts when relevant in any judicial proceeding under this chapter, any information acquired under authority of this chapter concerning any method or process which as a trade secret is entitled to protection;

(17) the distribution in commerce of a consumer commodity, as defined in this chapter, if such commodity is contained in a package or if there is affixed to that commodity a label which does not conform to the provisions of this chapter and of regulations promulgated under authority of this chapter. This prohibition does not apply to persons engaged in business as wholesale or retail distributors of consumer commodities except to the extent that such persons:

(a) are engaged in the packaging or labeling of such commodities; or

(b) prescribe or specify by any means the manner in which such commodities are packaged or labeled.

(18) the labeling or packaging of a food, drug, or cosmetic which fails to conform with the requirements of this chapter.

History: En. Sec. 3, Ch. 307, L. 1967; amd. Sec. 2, Ch. 171, L. 1971; amd. Sec. 2, Ch. 114, L. 1974; amd. Sec. 9, Ch. 403, L. 1977; R.C.M. 1947, 27-703(1) thru (16).

Cross-References

Immunity of persons donating food for free distribution, 27-1-716.

Deceptive business practices, 45-6-318.

Sale of diseased carcasses without inspection forbidden, 81-9-204.

Penalty for sale of diseased carcasses without inspection, 81-9-206.

50-31-502. Unlawful labeling of products resembling honey. It is unlawful for any person to sell or offer for sale any product which is in semblance of honey and which is labeled, advertised, or otherwise represented to be honey if it is not honey.

History: En. Sec. 3, Ch. 307, L. 1967; amd. Sec. 2, Ch. 171, L. 1971; amd. Sec. 2, Ch. 114, L. 1974; amd. Sec. 9, Ch. 403, L. 1977; R.C.M. 1947, 27-703(part).

50-31-503. Prosecution of minor violations not required. Nothing in this chapter shall be construed as requiring the department to report for the institution of proceedings under this chapter minor violations of this chapter whenever the department believes that the public interest will be adequately served in the circumstances by a suitable written notice of warning.

History: En. Sec. 8, Ch. 307, L. 1967; R.C.M. 1947, 27-708.

50-31-504. Notice and hearing required prior to prosecution. Before a violation of this chapter is reported to a state or county attorney for the institution of a criminal proceeding, the person against whom the proceeding is contemplated shall be given appropriate notice and an opportunity to present his views before the department or its designated agent, either orally or in writing and either in person or by attorney, with regard to the contemplated proceeding.

History: En. Sec. 7, Ch. 307, L. 1967; amd. Sec. 2, Ch. 187, L. 1977; R.C.M. 1947, 27-707(part).

50-31-505. Duty of state or county attorneys to prosecute. Each state attorney or county attorney to whom the department reports a violation of this chapter shall cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law.

History: En. Sec. 7, Ch. 307, L. 1967; amd. Sec. 2, Ch. 187, L. 1977; R.C.M. 1947, 27-707(part).

50-31-506. *(Temporary)* **Penalties.** (1) Any person who violates any of the provisions of 50-31-204, 50-31-501, 50-31-502, or 50-31-208 shall be guilty of a misdemeanor and shall on conviction thereof be subject to imprisonment for not more than 3 months, a fine of not more than $250, or both such imprisonment and fine.

(2) If the violation is committed after a conviction of such person under this section has become final, such person shall be subject to imprisonment for not more than 6 months, a fine of not more than $500, or both such imprisonment and fine.

50-31-506. *(Effective January 1, 1983)* **Penalties.** (1) Any person who violates any of the provisions of 50-31-204, 50-31-208, 50-31-313, 50-31-315, 50-31-501, or 50-31-502 is guilty of a misdemeanor and shall on conviction thereof be subject to imprisonment for not more than 3 months, a fine of not more than $250, or both such imprisonment and fine.

(2) If the violation is committed after a conviction of such person under this section has become final, such person shall be subject to imprisonment for not more than 6 months, a fine of not more than $500, or both such imprisonment and fine.

History: En. Sec. 5, Ch. 307, L. 1967; R.C.M. 1947, 27-705(a); amd. Sec. 3, Ch. 456, L. 1979; amd. Sec. 5, Ch. 95, L. 1981.

Compiler's Comments

1981 Amendment: Extended the penalties to violation of 50-31-313 or 50-31-315; made minor changes in grammar.

Effective Date: Section 7, Ch. 95, L. 1981, provided: "This act is effective January 1, 1983."

50-31-507. Exceptions to penalties. (1) No person shall be subject to the penalties of 50-31-506 for having violated subsection (1) or (3) of 50-31-501 if he establishes a guaranty or undertaking signed by and containing the name and address of the person residing in the state of Montana from whom he received in good faith the article to the effect that such article is not adulterated or misbranded within the meaning of this chapter, designating this chapter.

(2) No publisher, radiobroadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, shall be liable under 50-31-506 by reason of the dissemination by him of such false advertisement, unless he has refused, on the request of the department, to

furnish the department the name and post-office address of the manufacturer, packer, distributor, seller, or advertising agency residing in the state of Montana who causes him to disseminate such advertisement.

History: **En. Sec. 5, Ch. 307, L. 1967; R.C.M. 1947, 27-705(b), (c).**

50-31-508. Injunction to restrain prohibited acts. In addition to the remedies hereinafter provided, the department is hereby authorized to apply to district court for and such court shall have jurisdiction upon hearing and for cause shown to grant a temporary or permanent injunction restraining any person from violating any provision of 50-31-204, 50-31-501, 50-31-502, or 50-31-208 irrespective of whether or not there exists an adequate remedy at law.

History: **En. Sec. 4, Ch. 307, L. 1967; R.C.M. 1947, 27-704; amd. Sec. 4, Ch. 456, L. 1979.**

50-31-509. Detainer of adulterated or misbranded articles. (1) If an agent of the department finds or has probable cause to believe that any food, drug, device, or cosmetic is adulterated or so misbranded as to be dangerous or fraudulent within the meaning of this chapter, he shall affix to the article a tag or other appropriate marking giving notice that the article is or is suspected of being adulterated or misbranded and has been detained or embargoed and warning all persons not to remove or dispose of the article by sale or otherwise until permission for removal or disposal is given by the agent or the court. It is unlawful for a person to remove or dispose of a detained or embargoed article by sale or otherwise without permission. The owner of an embargoed article or another authorized person and the department may enter into a disposal agreement providing for the disposal, reconditioning, or other disposition of the embargoed article. If such an agreement is executed or if the embargo is otherwise removed by the department or the court, neither the department nor the state may be held liable for damages caused by such embargo provided that probable cause existed for its imposition.

(2) If an article detained or embargoed under subsection (1) is found by the agent to be adulterated or misbranded and a disposal agreement is not executed as provided in subsection (1), the agent shall petition the justice of peace, city judge, or district court in whose jurisdiction the article is detained or embargoed for an order for condemnation of the article. If the agent finds that an article so detained or embargoed is not adulterated or misbranded, he shall remove the tag or other marking.

(3) If the court finds that a detained or embargoed article is adulterated or misbranded, the article shall, after entry of the decree, be destroyed at the expense of the claimant thereof under the supervision of the agent and all court costs and fees and storage and other proper expenses shall be taxed against the claimant of the article or his agent.

(4) If the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after the costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that the article will be so labeled or processed, has been executed, may by order direct that the article be delivered to the claimant thereof for the labeling or processing under the supervision of an agent of the department. The expense of the supervision shall be paid by claimant. The article shall be returned to the claimant on the representation to the court by the

department that the article is no longer in violation of this chapter and that the expenses of the supervision have been paid.

History: **En. Sec. 6, Ch. 307, L. 1967; amd. Sec. 1, Ch. 187, L. 1977; R.C.M. 1947, 27-706(1) thru (3); amd. Sec. 1, Ch. 158, L. 1981.**

Compiler's Comments

1981 Amendment: Added the last two sentences in (1); inserted "and a disposal agreement is not executed as provided in subsection (1), the agent" before "shall petition the justice of peace" near the beginning of (2); made minor changes in grammar.

50-31-510. Condemnation of perishables. Whenever the department or any of its authorized agents find in any room, building, vehicle of transportation, or other structure any meat, seafood, poultry, vegetable, fruit, or other perishable article which is unsound or contains any filthy, decomposed, or putrid substance or that may be poisonous or deleterious to health or otherwise unsafe, the article being hereby declared to be a nuisance, the department or its authorized agent shall immediately condemn or destroy the article or in any other manner render the article unsalable as human food.

History: **En. Sec. 6, Ch. 307, L. 1967; amd. Sec. 1, Ch. 187, L. 1977; R.C.M. 1947, 27-706(4).**

CHAPTER 32

CONTROLLED SUBSTANCES

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Part 1

General Provisions

50-32-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Administer" means the direct application of a dangerous drug, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(a) a practitioner (or by his authorized agent); or

(b) the patient or research subject at the direction and in the presence of the practitioner.

(2) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.

(3) "Board" means the board of pharmacists provided for in 2-15-1843.

(4) "Bureau" means the drug enforcement administration, United States department of justice, or its successor agency.

(5) "Counterfeit substance" means a dangerous drug which or the container or labeling of which without authorization bears the trademark, trade name, or other identifying mark, imprint, number, or device or any likeness thereof of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the drug.

(6) "Dangerous drug" means a drug, substance, or immediate precursor in Schedules I through V hereinafter set forth.

(7) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a dangerous drug, whether or not there is an agency relationship.

(8) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(9) "Dispense" means to deliver a dangerous drug to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the drug for that delivery.

(10) "Dispenser" means a practitioner who dispenses.

(11) "Distribute" means to deliver other than by administering or dispensing a dangerous drug.

(12) "Distributor" means a person who distributes.

(13) (a) "Drug" means:

(i) a substance recognized as a drug in the official United States Pharmacopoeia/National Formulary or any supplement to it;

(ii) a substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals;

(iii) a substance (other than food) intended to affect the structure or any function of the body of man or animals; and

(iv) a substance intended for use as a component of any article specified in (a)(i), (a)(ii), or (a)(iii) of this subsection.

(b) "Drug" does not include a device or its components, parts, or accessories.

(14) "Immediate precursor" means a substance which the board of pharmacists finds and by rule designates as being the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a dangerous drug, the control of which is necessary to prevent, curtail, or limit manufacture.

(15) (a) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a dangerous drug either directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the drug or labeling or relabeling of its container.

(b) "Manufacture" does not include the preparation or compounding of a dangerous drug by an individual for his own use or the preparation, compounding, packaging, or labeling of a dangerous drug:

(i) by a practitioner as an incident to his administering or dispensing of a dangerous drug in the course of his professional practice; or

(ii) by a practitioner or his authorized agent under his supervision for the purpose of or as an incident to research, teaching, or chemical analysis and not for sale.

(16) "Marijuana (marihuana)" means all plant material from the genus cannabis containing tetrahydrocannabinol (THC) or seeds of the genus capable of germination.

(17) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(a) opium and opiate and any salt, compound, derivative, or preparation of opium or opiate;

(b) any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the drugs referred to in (17)(a) of this section, but not including the isoquinoline alkaloids of opium;

(c) opium poppy and poppy straw; or

(d) coca leaves and any salt, compound, derivative, or preparation of coca leaves and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these drugs, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(18) "Opiate" means any drug having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as a dangerous drug under 50-32-202, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

(19) "Opium poppy" means the plant of the species papaver somniferum 1., except its seeds.

(20) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

(21) "Poppy straw" means all parts, except the seeds, of the opium poppy after mowing.

(22) "Practitioner" means:

(a) a physician, dentist, veterinarian, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, or conduct research with respect to or to administer a dangerous drug in the course of professional practice or research in this state; and

(b) a pharmacy or other institution licensed, registered, or otherwise permitted to distribute, dispense, or conduct research with respect to or to administer a dangerous drug in the course of professional practice or research in this state.

(23) The term "prescription" is given the meaning it has in 37-7-101.

(24) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a substance or drug regulated under the provisions of this chapter.

(25) "State", when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States of America.

(26) "Ultimate user" means a person who lawfully possesses a dangerous drug for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

History: En. Sec. 1, Ch. 412, L. 1973; amd. Sec. 1, Ch. 350, L. 1974; amd. Sec. 1, Ch. 382, L. 1975; amd. Sec. 6, Ch. 187, L. 1977; R.C.M. 1947, 54-301; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 12, Ch. 379, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 274 substituted "department of commerce" for "department of professional and occupational licensing" in (8); and changed internal references to the department and the board.

Chapter 379 substituted "drug enforcement administration" for "bureau of narcotics and dangerous drugs" in (4); deleted a reference to the official Homeopathic Pharmacopoeia in (13)(a)(i).

50-32-102. Uniformity of construction. This chapter shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among those other states which enact it.

History: En. Sec. 28, Ch. 412, L. 1973; R.C.M. 1947, 54-326.

50-32-103. Board to administer chapter. (1) The board shall administer this chapter and may add drugs to or delete or reschedule all drugs enumerated in the schedules in 50-32-222, 50-32-224, 50-32-226, 50-32-229, or 50-32-232 pursuant to the rulemaking procedures of the Montana Administrative Procedure Act.

(2) The board shall promulgate rules for its administration which are not inconsistent with this chapter and specifically shall levy and the department shall collect reasonable registration fees relating to the registration and control of the manufacture, distribution, and dispensing of dangerous drugs within the state. The maximum fee for any registration shall not exceed $100 per year.

History: En. Secs. 2, 15, Ch. 412, L. 1973; amd. Secs. 2, 5, Ch. 350, L. 1974; R.C.M. 1947, 54-302(part), 54-315.

50-32-104. Board's authority limited. Authority to control under 50-32-103 does not extend to distilled spirits, liquor, wine, malt beverages, beer, porter, ale, stout, or tobacco.

History: En. Sec. 2, Ch. 412, L. 1973; amd. Sec. 2, Ch. 350, L. 1974; R.C.M. 1947, 54-302(5).

50-32-105. Board to conduct educational programs. (1) The board shall carry out educational programs designed to prevent and deter misuse and abuse of dangerous drugs.

(2) In connection with these programs, it may:

(a) promote better recognition of the problems of misuse and abuse of dangerous drugs within the regulated industry and among interested groups and organizations;

(b) assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of dangerous drugs;

(c) consult with interested groups and organizations to aid them in solving administrative and organizational problems;

(d) evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of dangerous drugs;

(e) disseminate the results of research on misuse and abuse of dangerous drugs to promote a better public understanding of what problems exist and what can be done to combat them; and

(f) assist in the education and training of state and local law enforcement officials in their efforts to control misuse and abuse of dangerous drugs.

History: En. Sec. 23, Ch. 412, L. 1973; amd. Sec. 11, Ch. 350, L. 1974; R.C.M. 1947, 54-323(1).

50-32-106. Board to encourage research. (1) The board shall encourage research on misuse and abuse of dangerous drugs.

(2) In connection with the research and in furtherance of the enforcement of this chapter, it may:

(a) establish methods to assess accurately the effects of dangerous drugs and identify and characterize those with potential for abuse;

(b) make studies and undertake programs of research to:

(i) develop new or improved approaches, techniques, systems, equipment, and devices to strengthen the enforcement of this chapter;

(ii) determine patterns of misuse and abuse of dangerous drugs and the social effects thereof; and

(iii) improve methods for preventing, predicting, understanding, and dealing with the misuse and abuse of dangerous drugs; and

(c) request the department to enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations, or special projects which bear directly on misuse and abuse of dangerous drugs.

(3) The board may authorize persons engaged in research on the use and effects of dangerous drugs to withhold the names and other identifying characteristics of individuals who are the subjects of the research. Persons who obtain this authorization are not compelled in any civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of research for which the authorization was obtained.

(4) The board may authorize the possession and distribution of dangerous drugs by persons engaged in research. Persons who obtain this authorization are exempt from state prosecution for possession and distribution of dangerous drugs to the extent of the authorization.

History: **En. Sec. 23, Ch. 412, L. 1973; amd. Sec. 11, Ch. 350, L. 1974; R.C.M. 1947, 54-323(2) thru (4).**

Part 2

Scheduling of Dangerous Drugs

50-32-201. General criteria to be considered. In making a determination regarding a drug, the board shall consider the following:

(1) the actual or relative potential for abuse;

(2) the scientific evidence of its pharmacological effect, if known;

(3) the state of current scientific knowledge regarding the drug;

(4) the history and current pattern of abuse;

(5) the scope, duration, and significance of abuse;

(6) the risk to the public health;

(7) the potential of the drug to produce psychic or physiological dependence liability; and

(8) whether the drug is an immediate precursor of a drug already controlled under this chapter.

History: **En. Sec. 2, Ch. 412, L. 1973; amd. Sec. 2, Ch. 350, L. 1974; R.C.M. 1947, 54-302(part).**

50-32-202. Designation of drug as dangerous drug. After considering the factors enumerated in 50-32-201, the board shall make findings with respect thereto, and if it finds the drug has a potential for abuse, it shall designate such drug a dangerous drug in the manner set forth in the Montana Administrative Procedure Act.

History: **En. Sec. 2, Ch. 412, L. 1973; amd. Sec. 2, Ch. 350, L. 1974; R.C.M. 1947, 54-302(2).**

50-32-203. Effect of rescheduling under federal law. If any drug is designated, rescheduled, or deleted as a "controlled substance" under federal law and notice thereof is given to the board, the board shall similarly control the drug under this chapter after the expiration of 30 days from publication in the federal register of a final order designating a drug as a "controlled substance" or rescheduling or deleting a drug unless, within that 30-day period, the board objects to inclusion, rescheduling, or deletion. In that case, the board shall cause the reasons for objection to be published and afford all interested parties an opportunity to be heard. At the conclusion of the hearing, the department shall publish the board's decision which shall be final unless altered thereafter by the board or by statute. Upon publication of objection to inclusion, rescheduling, or deletion under this chapter by the board, control under this chapter is stayed until the board's decision is published.

History: En. Sec. 2, Ch. 412, L. 1973; amd. Sec. 2, Ch. 350, L. 1974; R.C.M. 1947, 54-302(4).

50-32-204. Immediate precursors. If the board designates a drug as an immediate precursor, drugs which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

History: En. Sec. 2, Ch. 412, L. 1973; amd. Sec. 2, Ch. 350, L. 1974; R.C.M. 1947, 54-302(3).

50-32-205. Nonprescription drugs not to be scheduled. The board shall exclude any nonnarcotic drug from a schedule if such drug may, under the Federal Food, Drug, and Cosmetic Act and 50-31-307(1)(b) of the Montana Food, Drug, and Cosmetic Act, be lawfully sold over the counter without a prescription.

History: En. Sec. 2, Ch. 412, L. 1973; amd. Sec. 2, Ch. 350, L. 1974; R.C.M. 1947, 54-302(6).

50-32-206. Use of names of scheduled drugs. The dangerous drugs listed or to be listed in the schedules in 50-32-222, 50-32-224, 50-32-226, 50-32-229, and 50-32-232 are included by whatever official, common, usual, chemical, or trade name designated.

History: En. Sec. 3, Ch. 412, L. 1973; amd. Sec. 3, Ch. 350, L. 1974; R.C.M. 1947, 54-303.

50-32-207. Order forms for drugs in Schedules I and II. Dangerous drugs in Schedules I and II shall be distributed by a registrant to another registrant only pursuant to an order form. Compliance with the provisions of federal law respecting order forms shall be deemed compliance with this section unless the board prescribes particular forms to be used.

History: En. Sec. 21, Ch. 412, L. 1973; R.C.M. 1947, 54-321.

50-32-208. Prescription and medical requirements for scheduled drugs — penalty. (1) No dangerous drug in Schedule II may be dispensed without the written prescription of a practitioner.

(2) In emergency situations, as defined by rule of the board, Schedule II drugs may be dispensed upon a practitioner's oral prescription reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of 50-32-309. No prescription for a Schedule II drug may be refilled.

(3) A dangerous drug included in Schedule III or IV, which is a prescription drug as determined under the federal or Montana food, drug, and cosmetic acts, shall not be dispensed without a written or oral prescription of a practitioner. The prescription shall not be filled or refilled more than 6 months after the date thereof or be refilled more than five times unless renewed by the practitioner.

(4) A dangerous drug included in Schedule V shall not be distributed or dispensed other than for a medical purpose.

(5) Any person who violates the provisions of this section is guilty of a misdemeanor and upon conviction may be fined not to exceed $1,000 or be imprisoned in county jail for a term not to exceed 1 year, or both fined and imprisoned.

History: En. Sec. 22, Ch. 412, L. 1973; amd. Sec. 10, Ch. 350, L. 1974; R.C.M. 1947, 54-322; amd. Sec. 13, Ch. 37, L. 1979; amd. Sec. 13, Ch. 379, L. 1981.

Compiler's Comments

1981 Amendment: Added subsection (5).

50-32-209. Annual republication of schedules. The board shall revise and the department shall republish the schedules of dangerous drugs annually. For the purposes of this section, the mandate to republish may be satisfied by publication in the Administrative Rules of Montana pursuant to Title 2, chapter 4.

History: En. Sec. 14, Ch. 412, L. 1973; amd. Sec. 4, Ch. 350, L. 1974; R.C.M. 1947, 54-314; amd. Sec. 14, Ch. 379, L. 1981.

Compiler's Comments

1981 Amendment: Added the last sentence of the section relating to publication in the administrative rules.

50-32-210 through 50-32-220 reserved.

50-32-221. Criteria for placement of drug in Schedule I. The board shall place a drug in Schedule I if it finds that the drug:

(1) has high potential for abuse; and

(2) has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

History: En. Sec. 4, Ch. 412, L. 1973; R.C.M. 1947, 54-304.

50-32-222. Specific dangerous drugs included in Schedule I. The dangerous drugs listed in this section are included in Schedule I:

(1) any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation: acetylmethadol, allylprodine, alphacetylmethadol, alphameprodine, alphamethadol, benzethidine, betacetylmethadol, betameprodine, betamethadol, betaprodine, clonitazene, dextromoramide, dextrorphan, diampromide, diethylthiambutene, dimenoxadol, dimepheptanol, dimethylthiambutene, dioxaphetyl butyrate, dipipanone, ethylmethylthiambutene, etonitazene, etoxeridine, furethidine, hydroxypethidine, ketobemidone, levomoramide, levophenacylmorphan, morpheridine, noracymethadol, norlevorphanol, normethadone, norpipanone,

phenadoxone, phenampromide, phenomorphan, phenoperidine, piritramide, proheptazine, properidine, racemoramide, and trimeperidine;

(2) any of the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation: acetorphine, acetyldihydrocodeine, benzylmorphine, codeine methylbromide, codeine-n-oxide, cyprenorphine, desomorphine, dihydromorphine, etorphine, heroin, hydromorphinol, methyl-desorphine, methyldihydromorphine, morphine methylbromide, morphine methylsulfonate, morphine-n-oxide, myrophine, nicocodeine, nicomorphine, normorphine, phoclodine, and thebacon;

(3) any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic drugs, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation: 3, 4-methylenedioxy amphetamine, 5-methoxy-3, 4-methylenedioxy amphetamine, 3, 4, 5-trimethoxy amphetamine, bufotenine, diethyltryptamine, dimethyltryptamine, 4-methyl 1-2, 5-dimethoxylamphetamine, ibogaine, lysergic acid diethylamide, marihuana, mescaline, peyote, n-ethyl-3-piperidyl benzilate, n-methyl-3-piperidyl benzilate, psilocybin, psilocyn, tetrahydrocannabinols, and 2, 5-dimethoxyamphetamine. If prescription or administration is authorized by the Federal Food, Drug and Cosmetic Act, then any material, compound, mixture, or preparation containing tetrahydrocannabinols shall automatically be rescheduled from Schedule I to Schedule II.

History: En. Sec. 5, Ch. 412, L. 1973; R.C.M. 1947, 54-305; amd. Sec. 1, Ch. 320, L. 1979.

50-32-223. Criteria for placement of drug in Schedule II. The board shall place a drug in Schedule II if it finds that:

(1) the drug has high potential for abuse;

(2) the drug has currently accepted medical use in treatment in the United States or currently accepted medical use with severe restrictions; and

(3) the abuse of the drug may lead to severe psychic or physical dependence.

History: En. Sec. 6, Ch. 412, L. 1973; R.C.M. 1947, 54-306.

50-32-224. Specific dangerous drugs included in Schedule II. The dangerous drugs listed in this section are included in Schedule II:

(1) any of the following drugs, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(a) opium and opiate and any salt, compound, derivative, or preparation of opium or opiate;

(b) any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the drugs referred to in subsection (a), but not including the isoquinoline alkaloids of opium;

(c) opium poppy and poppy straw;

(d) coca leaves and any salt, compound, derivative, or preparation of coca leaves and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these drugs, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine;

(2) any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

(a) alphaprodine;
(b) anileridine;
(c) bezitramide;
(d) dihydrocodeine;
(e) diphenoxylate;
(f) fentanyl;
(g) isomethadone;
(h) levomethorphan;
(i) levorphanol;
(j) metazocine;
(k) methadone;
(l) methadone—intermediate;
(m) 4-cyano-2-dimethyl-amino-4;
(n) 4-diphenyl butane;
(o) moramide—intermediate;
(p) 2-methyl-3-morpholino-1;
(q) 1-diphenyl-propane-carboxylic acid;
(r) pethidine;
(s) pethidine—intermediate—a;
(t) 4-cyano-1-methyl-4-phenylpiperidine;
(u) pethidine—intermediate—b;
(v) ethyl-4-phenylpiperidine-4-carboxylate;
(w) pethidine—intermediate—c;
(x) 1-methyl-4-phenylpiperidine-4-carboxylic acid;
(y) phenazocine;
(z) piminodine;
(aa) racemethorphan; and
(bb) racemorphan;

(3) any material, compound, mixture, or preparation which contains any quantity of the following drugs having a potential for abuse associated with a stimulant effect on the central nervous system:

(a) amphetamine, its salts, optical isomers, and salts of its optical isomers;

(b) phenmetrazine and its salts;

(c) any drug which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers;

(d) methylphenidate.

History: En. Sec. 7, Ch. 412, L. 1973; R.C.M. 1947, 54-307.

50-32-225. Criteria for placement of drug in Schedule III. The board shall place a drug in Schedule III if it finds that:

(1) the drug has a potential for abuse less than the drugs listed in Schedules I and II;

(2) the drug has currently accepted medical use in treatment in the United States; and

(3) abuse of the drug may lead to moderate or low physical dependence or high psychological dependence.

History: En. Sec. 8, Ch. 412, L. 1973; R.C.M. 1947, 54-308.

50-32-226. Specific dangerous drugs included in Schedule III. The dangerous drugs listed in this section are included in Schedule III:

(1) unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following drugs having a potential for abuse associated with a depressant effect on the central nervous system:

(a) any drug which contains any quantity of a derivative of barbituric acid or any salt of a derivative of barbituric acid, except those drugs which are specifically listed in other schedules;

(b) chlorhexadol;

(c) glutethimide;

(d) lysergic acid;

(e) lysergic acid amide;

(f) methyprylon;

(g) phencyclidine;

(h) sulfondiethylmethane;

(i) sulfonethylmethane; and

(j) sulfonmethane;

(2) nalorphine;

(3) any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs or any salts thereof:

(a) not more than 1.8 grams of codeine or any of its salts per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(b) not more than 1.8 grams of codeine or any of its salts per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(c) not more than 300 milligrams of dihydrocodeinone or any of its salts per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(d) not more than 300 milligrams of dihydrocodeinone or any of its salts per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(e) not more than 1.8 grams of dihydrocodeine or any of its salts per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(f) not more than 300 milligrams of ethylmorphine or any of its salts per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more ingredients in recognized therapeutic amounts;

(g) not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; or

(h) not more than 50 milligrams of morphine or any of its salts per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

History: **En. Sec. 9, Ch. 412, L. 1973; R.C.M. 1947, 54-309(1) thru (4).**

50-32-227. Board authorized to exempt certain compounds, mixtures, or preparations from Schedule III. The board may except by rule any compound, mixture, or preparation containing any stimulant or depressant drug listed in 50-32-226(1) and (2) from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the drugs which have a stimulant or depressant effect on the central nervous system.

History: **En. Sec. 9, Ch. 412, L. 1973; R.C.M. 1947, 54-309(5).**

50-32-228. Criteria for placement of drug in Schedule IV. The board shall place a drug in Schedule IV if it finds that:

(1) the drug has a low potential for abuse relative to drugs in Schedule III;

(2) the drug has currently accepted medical use in treatment in the United States; and

(3) abuse of the drug may lead to limited physical dependence or psychological dependence relative to the drugs in Schedule III.

History: **En. Sec. 10, Ch. 412, L. 1973; R.C.M. 1947, 54-310.**

50-32-229. Specific dangerous drugs included in Schedule IV. The following dangerous drugs are included in Schedule IV: any material, compound, mixture, or preparation which contains any quantity of the following drugs having a potential for abuse associated with a depressant effect on the central nervous system: barbital, chloral betaine, chloral hydrate, ethchlorvynol, ethinamate, methohexital, meprobamate, methylphenobarbital, paraldehyde, petrichloral, and phenobarbital.

History: **En. Sec. 11, Ch. 412, L. 1973; R.C.M. 1947, 54-311(1), (2); amd. Sec. 14, Ch. 37, L. 1979.**

50-32-230. Board authorized to exempt certain compounds, mixtures, or preparations from Schedule IV. The board may except by rule any compound, mixture, or preparation containing any depressant drug listed in 50-32-229 from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the drugs which have a depressant effect on the central nervous system.

History: **En. Sec. 11, Ch. 412, L. 1973; R.C.M. 1947, 54-311(3).**

50-32-231. Criteria for placement of drug in Schedule V. The board shall place a drug in Schedule V if it finds that:

(1) the drug has low potential for abuse relative to the controlled drugs listed in Schedule IV;

(2) the drug has currently accepted medical use in treatment in the United States; and

(3) the drug has limited physical dependence or psychological dependence liability relative to the dangerous drugs listed in Schedule IV.

History: En. Sec. 12, Ch. 412, L. 1973; R.C.M. 1947, 54-312.

50-32-232. Specific dangerous drugs included in Schedule V. The following dangerous drugs are included in Schedule V: any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs which also contains one or more nonnarcotic, active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) not more than 200 milligrams of codeine or any of its salts per 100 milliliters or per 100 grams;

(2) not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.

History: En. Sec. 13, Ch. 412, L. 1973; R.C.M. 1947, 54-313; amd. Sec. 15, Ch. 37, L. 1979.

Part 3

Annual Registration

50-32-301. Annual registration required for manufacturer, distributor, or dispenser. (1) Every person who manufactures, distributes, or dispenses any dangerous drug within this state must obtain annually a registration issued by the department in accordance with board rules.

(2) Persons registered by the board under this chapter to manufacture, distribute, dispense, or conduct research with dangerous drugs may possess, manufacture, distribute, dispense, or conduct research with those drugs to the extent authorized by their registration and in conformity with the other provisions of this chapter.

History: En. Sec. 16, Ch. 412, L. 1973; amd. Sec. 6, Ch. 350, L. 1974; amd. Sec. 1, Ch. 291, L. 1975; R.C.M. 1947, 54-316(1), (2); amd. Sec. 15, Ch. 379, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "on or after January 1, 1974" after "state must" in (1).

50-32-302. Exceptions to registration requirement. The following persons need not register and may lawfully possess dangerous drugs under this chapter:

(1) an agent or employee of any registered manufacturer, distributor, or dispenser of any dangerous drug if he is acting in the usual course of his business or employment;

(2) a common or contract carrier or warehouseman or an employee thereof, whose possession of any dangerous drug is in the usual course of business or employment;

(3) an ultimate user or a person in possession of any dangerous drug pursuant to a lawful order of a practitioner or in lawful possession of a Schedule V drug;

(4) officers and employees of the state or a political subdivision of the state, while acting in the course of their official duties.

History: En. Sec. 16, Ch. 412, L. 1973; amd. Sec. 6, Ch. 350, L. 1974; amd. Sec. 1, Ch. 291, L. 1975; R.C.M. 1947, 54-316(3).

50-32-303. Waiver of registration requirement for practitioners licensed by federal government. The board shall waive the requirement for registration of practitioners, other than pharmacies, who are registered or licensed by the federal government to dispense dangerous drugs.

History: En. Sec. 16, Ch. 412, L. 1973; amd. Sec. 6, Ch. 350, L. 1974; amd. Sec. 1, Ch. 291, L. 1975; R.C.M. 1947, 54-316(4).

50-32-304. Waiver of registration requirement when in public interest. The board may waive by rule the requirement for registration of certain manufacturers, distributors, or dispensers if it finds it consistent with the public health and safety.

History: En. Sec. 16, Ch. 412, L. 1973; amd. Sec. 6, Ch. 350, L. 1974; amd. Sec. 1, Ch. 291, L. 1975; R.C.M. 1947, 54-316(5).

50-32-305. Separate registration required. A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses dangerous drugs.

History: En. Sec. 16, Ch. 412, L. 1973; amd. Sec. 6, Ch. 350, L. 1974; amd. Sec. 1, Ch. 291, L. 1975; R.C.M. 1947, 54-316(6).

50-32-306. Criteria for registration of manufacturers and distributors. (1) The board shall register an applicant to manufacture or distribute dangerous drugs included in 50-32-222, 50-32-224, 50-32-226, 50-32-229, and 50-32-232 unless it determines that the issuance of that registration would be inconsistent with the public interest.

(2) In determining the public interest, the board shall consider the following factors:

(a) maintenance of effective controls against diversion of dangerous drugs into other than legitimate medical, scientific, or industrial channels;

(b) compliance with applicable state and local law;

(c) any convictions of the applicant under any federal and state laws relating to any dangerous drug;

(d) past experience in the manufacture or distribution of dangerous drugs and the existence in the applicant's establishment of effective controls against diversion;

(e) furnishing by the applicant of false or fraudulent material in any application filed under this chapter;

(f) suspension or revocation of the applicant's federal registration to manufacture, distribute, or dispense dangerous drugs as authorized by federal law; and

(g) any other factors relevant to and consistent with the public health and safety.

(3) Compliance by manufacturers and distributors with the provisions of the federal law respecting registration (excluding fees) entitles them to be registered under this chapter.

History: En. Sec. 17, Ch. 412, L. 1973; amd. Sec. 7, Ch. 350, L. 1974; R.C.M. 1947, 54-317(1), (4).

50-32-307. Manufacture and distribution limited by registration. Registration under 50-32-306 does not entitle a registrant to manufacture and distribute dangerous drugs in Schedule I or II other than those specified in the registration.

History: En. Sec. 17, Ch. 412, L. 1973; amd. Sec. 7, Ch. 350, L. 1974; R.C.M. 1947, 54-317(2).

50-32-308. Criteria for registration of practitioners. (1) Practitioners shall be registered to dispense any dangerous drugs or to conduct research with dangerous drugs in Schedules II through V if they are authorized to dispense or conduct research under the laws of this state. The board need not require separate registration for practitioners engaging in research with nonnarcotic dangerous drugs in Schedules II through V where the registrant is already registered under this chapter in another capacity.

(2) Practitioners registered under federal law to conduct research with Schedule I drugs may conduct research with Schedule I drugs within this state upon furnishing the board evidence of that federal registration.

History: En. Sec. 17, Ch. 412, L. 1973; amd. Sec. 7, Ch. 350, L. 1974; R.C.M. 1947, 54-317(3).

50-32-309. Registrants to maintain records and inventories. Persons registered to manufacture, distribute, or dispense dangerous drugs under this chapter shall keep records and maintain inventories in conformance with the record keeping and inventory requirements of federal law and with any additional rules the board issues.

History: En. Sec. 20, Ch. 412, L. 1973; R.C.M. 1947, 54-320.

50-32-310. Inspections authorized. The board may have the establishment of a registrant or applicant for registration inspected.

History: En. Sec. 16, Ch. 412, L. 1973; amd. Sec. 6, Ch. 350, L. 1974; amd. Sec. 1, Ch. 291, L. 1975; R.C.M. 1947, 54-316(7).

50-32-311. Revocation or suspension of registration. (1) A registration under 50-32-301 to manufacture, distribute, or dispense a dangerous drug may be suspended or revoked by the board upon a finding that the registrant has:

(a) furnished false or fraudulent material information in any application filed under this chapter;

(b) been convicted of a felony under any state or federal law relating to any dangerous drug or controlled substance; or

(c) had his federal registration suspended or revoked to manufacture, distribute, or dispense controlled substances.

(2) The board may limit revocation or suspension of a registration to the particular dangerous drug with respect to which grounds for revocation or suspension exist.

(3) If the board suspends or revokes a registration, all dangerous drugs owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of drugs under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable drugs and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all dangerous drugs may be forfeited to the state.

(4) The board shall promptly cause the bureau to be notified of all orders suspending or revoking registration and all forfeitures of dangerous drugs.

History: En. Sec. 18, Ch. 412, L. 1973; amd. Sec. 8, Ch. 350, L. 1974; R.C.M. 1947, 54-318.

50-32-312. Procedure for denial, suspension, revocation, or refusal, to renew registration. (1) Before denying, suspending, or revoking a registration or refusing a renewal of registration, the board shall serve upon the applicant or registrant an order to show cause why registration should not be denied, revoked, or suspended or why the renewal should not be refused. The order to show cause shall contain a statement of the basis therefor and shall require the applicant or registrant to appear before the board at a time and place not less than 30 days after the date of service of the order, but in the case of a denial of renewal of registration, the show cause order shall be served not later than 30 days before the expiration of the registration. These proceedings shall be conducted without regard to any criminal prosecution or other proceeding. Proceedings to refuse renewal of registration do not abate the existing registration, which remains in effect pending the outcome of the administrative hearing.

(2) The board may suspend, without an order to show cause, any registration simultaneously with the institution of proceedings under 50-32-311 or whenever renewal of registration is refused if it finds that there is an imminent danger to the public health or safety which warrants such action. The suspension continues in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the board or dissolved by a court of competent jurisdiction.

History: En. Sec. 19, Ch. 412, L. 1973; amd. Sec. 9, Ch. 350, L. 1974; amd. Sec. 7, Ch. 187, L. 1977; R.C.M. 1947, 54-319.

50-32-313. Practitioner's failure to register a misdemeanor. Practitioners who fail or refuse to register as required by this chapter shall be guilty of a misdemeanor and upon conviction therefor may be fined not to exceed $1,000, imprisoned in the county jail not to exceed 1 year, or both.

History: En. Sec. 29, Ch. 412, L. 1973; R.C.M. 1947, 54-327.

Part 4

Transfer of Precursors to Controlled Substances

50-32-401. Report required for precursor to controlled substance. (1) A manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any of the following substances to a person in this state must submit a report to the department of justice detailing all such transactions:

(a) phenyl-2-propanone;
(b) methylamine;
(c) d-lysergic acid;
(d) ergotamine tartrate;
(e) diethyl malonate;
(f) malonic acid;
(g) ethyl malonate;

(h) barbituric acid; and

(i) piperidine.

(2) The department of justice may adopt, amend, or repeal rules in accordance with the Montana Administrative Procedure Act that add or delete substances to the list of regulated substances detailed in subsection (1), if the substance is a precursor to a dangerous drug as defined in 50-32-101.

(3) This section does not apply to any of the following:

(a) a pharmacist or other authorized person who sells or furnishes the substance upon the prescription of a physician, dentist, podiatrist, or veterinarian;

(b) a physician, dentist, podiatrist, or veterinarian who administers or furnishes the substance to his patients;

(c) a manufacturer or wholesaler licensed by the board of pharmacists who sells, transfers, or otherwise furnishes the substance to a licensed pharmacist, physician, dentist, podiatrist, or veterinarian;

(d) transfers of the substances listed in subsection (1) within any college or university to an employee or student of the college or university for the purpose of teaching or research authorized by the college or university.

History: En. Sec. 1, Ch. 227, L. 1979.

50-32-402. Reports required — exceptions. (1) Except as provided in subsection (2), a manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any substance regulated pursuant to 50-32-401 to a person in this state must, within 72 hours, submit a report of the transaction to the department of justice.

(2) The department may authorize the submission of the reports on a monthly basis for repeated, regular transactions between the furnisher and the recipient involving the same substance, if the department determines:

(a) a pattern of regular supply of the substance exists as between the manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes the substance and the recipient of the substance; and

(b) the recipient has established a record of use of the substance for lawful purposes.

History: En. Sec. 2, Ch. 227, L. 1979.

50-32-403. Common reporting form. (1) The department of justice must provide a common reporting form for the report required under 50-32-401.

(2) The form must contain the following information:

(a) name of the substance;

(b) quantity of the substance sold, transferred, or furnished;

(c) the date the substance was sold, transferred, or furnished;

(d) the name and address of the person buying or receiving the substance; and

(e) the name and address of the manufacturer, wholesaler, or retailer.

History: En. Sec. 3, Ch. 227, L. 1979.

50-32-404. Loss, theft, or other discrepancy to be reported. (1) The theft or loss of a substance regulated in accordance with 50-32-401 must be reported to the department of justice within 3 days after the theft or loss is discovered.

(2) Any difference between the quantity received of any substance regulated as provided in 50-32-401 and the quantity shipped must be reported to the department of justice within 3 days of the discovery of the discrepancy.

(3) A report made pursuant to this section shall also include the name of the common carrier or person who transported the substance and the date of shipment.

History: **En. Sec. 4, Ch. 227, L. 1979.**

50-32-405. Violation — penalties. (1) A person commits the offense of failure to report sale or transfer of a precursor to a controlled substance if he purposely or knowingly fails to report the sale, transfer, or other furnishing of a substance regulated by 50-32-401.

(2) A person convicted of failing to report the sale or transfer of a precursor to a controlled substance shall be fined not more than $10,000 or imprisoned in the state prison for not more than 10 years, or both.

History: **En. Sec. 5, Ch. 227, L. 1979.**

CHAPTER 33

BLOOD AND BLOOD PRODUCTS

Part 1 — General Provisions

Section

50-33-101. Labeling of containers by blood banks required.
50-33-102. Furnishing of blood and blood products declared service and not sale.
50-33-103. Immunity of physicians and hospitals.
50-33-104. Immunity of blood banks.

Part 1

General Provisions

50-33-101. Labeling of containers by blood banks required. Each container or package containing any whole blood, plasma, blood products, or blood derivatives sold by a blood bank shall have plainly stamped or printed thereon the fact that the product therein was tested as required in 50-33-104, giving the date of the test and such information as is necessary to designate the type of test made.

History: **En. Sec. 3, Ch. 284, L. 1971; R.C.M. 1947, 69-2205.**

50-33-102. Furnishing of blood and blood products declared service and not sale. The furnishing of and the injecting or transfusing into the human body of whole blood, plasma, blood products, and blood derivatives by a hospital, long-term care facility, or doctor of any such substances obtained from any source which said hospital, long-term care facility, or doctor is not directly or indirectly financially interested in or has any control over is hereby declared not to be a sale of such whole blood, plasma, blood products, or blood derivatives for any purpose.

History: **En. Sec. 1, Ch. 284, L. 1971; amd. Sec. 1, Ch. 76, L. 1975; R.C.M. 1947, 69-2203(part).**

50-33-103. Immunity of physicians and hospitals. No physician, long-term care facility, or hospital may be held liable, in the absence of fault or negligence on the part of such a hospital, long-term care facility, or doctor, for injuries resulting from the furnishing or performing of such services.

History: **En. Sec. 1, Ch. 284, L. 1971; amd. Sec. 1, Ch. 76, L. 1975; R.C.M. 1947, 69-2203(part).**

50-33-104. Immunity of blood banks. No blood bank may be held liable in the absence of fault or negligence for injuries resulting from the injecting or transfusing of whole blood, plasma, blood products, or blood derivatives supplied by any such blood bank to any hospital or physician if such blood products have been tested by the latest testing procedures in accordance with recommendations of the American association of blood banks and by such test are not found to be dangerous to the health of the recipient of such blood products.

History: **En. Sec. 2, Ch. 284, L. 1971; R.C.M. 1947, 69-2204.**

CHAPTER 34

FLOUR AND BREAD

Part 1 — General Provisions

Section

50-34-101. Definitions.
50-34-102. Department to adopt rules.
50-34-103. Rules to be published.
50-34-104. Inspections and taking of samples authorized.
50-34-105. Vitamin and mineral content requirements for flour.
50-34-106. Exceptions to vitamin and mineral requirements for flour.
50-34-107. Vitamin and mineral content requirements for bread.
50-34-108. Vitamin and mineral requirements to be uniform with federal standards.
50-34-109. Modification of vitamin and mineral requirements when ingredients scarce.
50-34-110. Penalty.

Part 1

General Provisions

50-34-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Flour" means the foods commonly known in the milling and baking industries as:

(a) white flour, also known as wheat flour or plain flour;

(b) bromated flour;

(c) self-rising flour, also known as self-rising white flour or self-rising wheat flour; and

(d) phosphated flour, also known as phosphated white flour or phosphated wheat flour, but excluding whole wheat flour and special flours not used for bread, roll, bun, or biscuit baking, such as specialty cake and pancake flours.

(2) "White bread" means any bread made with flour, whether baked in a pan or on a hearth or screen, and which is commonly known or usually represented and sold as white bread, including Vienna bread, French bread, and Italian bread.

(3) "Rolls" includes plain white rolls and buns of the semi-bread dough type, namely: soft rolls, such as hamburger rolls, hot dog rolls, parkerhouse rolls, and hard rolls, such as Vienna rolls, kaiser rolls, yeast-raised sweet rolls, or sweet buns made with fillings or coatings, such as cinnamon rolls or buns and butterfly rolls.

(4) "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

(5) "Person" means an individual, corporation, partnership, association, joint-stock company, trust, or any group of persons whether incorporated or not, engaged in the commercial manufacture or sale of flour, white bread, or rolls.

History: **En. Sec. 1, Ch. 274, L. 1971; amd. Sec. 5, Ch. 349, L. 1974; R.C.M. 1947, 27-801.**

50-34-102. Department to adopt rules. The department shall adopt rules and orders for the efficient enforcement of this chapter.

History: **En. Sec. 4, Ch. 274, L. 1971; amd. Sec. 6, Ch. 349, L. 1974; R.C.M. 1947, 27-804(1).**

50-34-103. Rules to be published. (1) Orders and rules adopted by the department under this chapter shall be published in the manner prescribed in subsection (2) of this section and, within the limits specified by this chapter, shall become effective on the date the department fixes.

(2) When under this chapter publication of any notice, order, or rule is required, the publication shall be made at least once in at least one daily newspaper of general circulation printed and published in this state.

History: **En. Sec. 4, Ch. 274, L. 1971; amd. Sec. 6, Ch. 349, L. 1974; R.C.M. 1947, 27-804(4), (5).**

50-34-104. Inspections and taking of samples authorized. For the purpose of this chapter, the department may take samples for analysis, conduct examinations and investigations, and enter at reasonable times a factory, mill, bakery, warehouse, shop, or establishment where flour, white bread, or rolls are manufactured, processed, packed, sold, or held or a vehicle being used for the transportation thereof and may inspect the place or vehicle and any flour, white bread, or rolls therein and all pertinent equipment, materials, containers, and labeling.

History: **En. Sec. 4, Ch. 274, L. 1971; amd. Sec. 6, Ch. 349, L. 1974; R.C.M. 1947, 27-804(6).**

50-34-105. Vitamin and mineral content requirements for flour. (1) It shall be unlawful for any person to manufacture, mix, compound, sell, or offer for sale, for human consumption in this state, flour unless the following vitamins and minerals are contained in each pound of such flour:

(a) not less than 2.0 milligrams and not more than 2.5 milligrams of thiamine;

(b) not less than 1.2 milligrams and not more than 1.5 milligrams of riboflavin;

(c) not less than 16.0 milligrams and not more than 20.0 milligrams of niacin or niacinamide;

(d) not less than 13.0 milligrams and not more than 16.5 milligrams of assimilable iron (Fe).

(2) Self-rising flour, in addition to the above ingredients, shall contain not less than 500 milligrams and not more than 1500 milligrams of assimilable calcium (Ca).

History: **En. Sec. 2, Ch. 274, L. 1971; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-802(part).**

50-34-106. Exceptions to vitamin and mineral requirements for flour. (1) The terms of 50-34-105 shall not apply to flour sold to distributors, bakers, or other processors if the purchaser furnishes to the seller a certificate in such form as the department shall by regulation prescribe certifying that such flour will be:

(a) resold to a distributor, baker, or other processor;

(b) used in the manufacture, mixing, or compounding of flour, white bread, or rolls enriched to meet the requirements of this chapter; or

(c) used in the manufacture of products other than flour, white bread, or rolls.

(2) It shall be unlawful for any purchaser so furnishing a certificate to use or resell the flour so purchased in any manner other than as prescribed in this section.

History: **En. Sec. 2, Ch. 274, L. 1971; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-802(part).**

50-34-107. Vitamin and mineral content requirements for bread. It shall be unlawful for any person to manufacture, bake, sell, or offer for sale, for human consumption in this state, any white bread or rolls unless the following vitamins and minerals are contained in each pound of such bread or rolls:

(1) not less than 1.1 milligrams and not more than 1.8 milligrams of thiamine;

(2) not less than 0.7 milligrams and not more than 1.6 milligrams of riboflavin;

(3) not less than 10.0 milligrams and not more than 15.0 milligrams of niacin;

(4) not less than 8.0 milligrams and not more than 12.5 milligrams of assimilable iron (Fe).

History: **En. Sec. 3, Ch. 274, L. 1971; R.C.M. 1947, 27-803(part).**

50-34-108. Vitamin and mineral requirements to be uniform with federal standards. (1) The requirements for vitamin and mineral content specified in 50-34-105 and 50-34-107 are identical with those of the federal standards.

(2) When the vitamin and mineral requirements in 50-34-105 and 50-34-107 are no longer in conformity with the legally established standards governing the interstate shipment of enriched flour and enriched white bread or rolls, the department, in order to maintain uniformity between intrastate and interstate vitamin and mineral requirements for the foods under this chapter, shall modify or revise the requirements to conform with amended standards governing interstate shipments. The interstate standards referred to are those standards established under the Federal Food, Drug, and Cosmetic Act of 1938, as amended (Title 21 U.S.C. 301 et seq.).

History: **(1)En. Sec. 3, Ch. 274, L. 1971; Sec. 27-803, R.C.M. 1947; (2)En. Sec. 4, Ch. 274, L. 1971; amd. Sec. 6, Ch. 349, L. 1974; Sec. 27-804, R.C.M. 1947; R.C.M. 1947, 27-803(part), 27-804(2).**

50-34-109. Modification of vitamin and mineral requirements when ingredients scarce. (1) In the event of findings by the department that there is an existing or imminent shortage of an ingredient required by 50-34-105 or 50-34-107 and that because of this shortage the sale and distribution of flour, white bread, or rolls may be impeded by the enforcement of this chapter, the department shall issue an order, to be effective immediately upon issuance, permitting the omission of the ingredient from flour, white bread, or rolls and, if it finds it necessary or appropriate, excepting the foods from labeling requirements until the further order of the department.

(2) These findings may be made without hearing on the basis of an order or of factual information supplied by the appropriate federal agency or officer.

(3) In the absence of an order of the appropriate federal agency or factual information supplied by it, the department, on receiving the sworn statements of 10 or more persons subject to this chapter that they believe a shortage exists or is imminent, shall within 20 days hold a public hearing at which an interested person may present evidence and shall make findings based on the evidence presented. The department shall publish notice of the hearing at least 10 days before it.

(4) When the department has reason to believe that the shortage no longer exists, it shall hold a public hearing, after at least 10 days' notice has been given, at which an interested person may present evidence, and it shall make findings based on the evidence presented. If it finds that a shortage no longer exists, it shall issue an order effective not less than 30 days after its publication revoking the previous order; however, undisposed stocks of flour on hand at the effective date of the revocation order or flour manufactured before the effective date for sale in this state may thereafter be lawfully sold or disposed of.

History: En. Sec. 4, Ch. 274, L. 1971; amd. Sec. 6, Ch. 349, L. 1974; R.C.M. 1947, 27-804(3).

50-34-110. Penalty. A person who violates the provisions of this chapter or the orders or rules promulgated by the department under authority of it shall upon conviction be fined for each offense no more than $100 or be imprisoned for any term not to exceed 30 days.

History: En. Sec. 5, Ch. 274, L. 1971; amd. Sec. 107, Ch. 349, L. 1974; amd. Sec. 4, Ch. 187, L. 1977; R.C.M. 1947, 27-805.

CHAPTER 35

IMPORTED MEATS
(Repealed. Sec. 1, Ch. 136, L. 1981)

Chapter Compiler's Comments

Histories of Repealed Sections:

50-35-101. En. 27-320 by Sec. 3, Ch. 415, L. 1975; R.C.M. 1947, 27-320.

50-35-102. En. 27-318 by Sec. 1, Ch. 415, L. 1975; R.C.M. 1947, 27-318(part).

50-35-103. En. 27-318 by Sec. 1, Ch. 415, L. 1975; R.C.M. 1947, 27-318(part); amd. Sec. 1, Ch. 278, L. 1979.

50-35-104. En. 27-319 by Sec. 2, Ch. 415, L. 1975; R.C.M. 1947, 27-319; amd. Sec. 2, Ch. 278, L. 1979.

50-35-105. En. Sec. 3, Ch. 278, L. 1979.

CHAPTER 36

MATTRESSES — SHODDY CONTROL

Part 1 — General Provisions

Section

50-36-101. Definitions.
50-36-102. Department authorized to adopt rules.
50-36-103. Inspections authorized.
50-36-104. Label required.
50-36-105. Prohibited acts.
50-36-106. Condemnation of mattresses.
50-36-107. Each mattress in violation a separate offense.

Part 1

General Provisions

50-36-101. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

(2) "Mattress" means any quilted pad, comforter, mattress, mattress pad, hammock pad, bunk quilt, settee, couch, daybed, davenport, overstuffed chair, cushion, or pillow filled with any soft material capable of use for sleeping or reclining purposes.

History: (1)En. Sec. 2, Ch. 197, L. 1967; amd. Sec. 28, Ch. 349, L. 1974; Sec. 69-4102, R.C.M. 1947; (2)En. Sec. 114, Ch. 197, L. 1967; Sec. 69-4701, R.C.M. 1947; R.C.M. 1947, 69-4102(2), 69-4701.

50-36-102. Department authorized to adopt rules. The department may adopt rules and standards for mattress fillings to protect public health.

History: En. Sec. 117, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-4704.

50-36-103. Inspections authorized. Officers and employees of the department, local health officials, or officials discharging similar duties may enter establishments where mattresses are manufactured, renovated, or sold and examine the premises or records to determine whether statutes or rules and standards adopted by the department are being violated.

History: En. Sec. 118, Ch. 197, L. 1967; amd. Secs. 107 and 109, Ch. 349, L. 1974; R.C.M. 1947, 69-4705.

50-36-104. Label required. A person shall not manufacture or renovate for sale, consignment, or rental a mattress unless it bears a label not smaller than 6 square inches securely attached to the covering which states the name and address of the manufacturer or vendor and type and percent of various materials used in filling. If the mattress contains secondhand material or has been renovated or remade, the label shall contain the words "secondhand material". The labels shall be in the form and contain information as prescribed by the department.

History: En. Sec. 115, Ch. 197, L. 1967; amd. Sec. 104, Ch. 349, L. 1974; R.C.M. 1947, 69-4702.

50-36-105. Prohibited acts. A person shall not:

(1) manufacture or renovate for sale, consignment, or rental a mattress containing material designated as unfit for filling by rules adopted by the department;

(2) manufacture or renovate for sale, consignment, or rental a mattress which contains secondhand materials or materials designated shoddy by the department unless the mattress has been fumigated or sterilized by a process approved by the department;

(3) use in a description for any mattress a term or designation that is likely to mislead;

(4) remove, alter, or deface any label required by 50-36-104.

History: En. Sec. 116, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-4703.

50-36-106. Condemnation of mattresses. The department may condemn and seize mattresses found in violation of this chapter or rules or standards adopted by the department. Mattresses seized shall be inspected by the nearest city judge or justice of the peace together with any information obtained. The judge or justice shall dispose of the mattresses or destroy them in the way which will best satisfy the requirements of law.

History: En. Sec. 119, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-4706.

50-36-107. Each mattress in violation a separate offense. The unit for a separate and distinct offense in violation of this chapter is each mattress made, remade, renovated, sold, offered for sale, delivered, consigned, rented, or possessed with intent to sell, deliver, consign, or rent.

History: En. Sec. 120, Ch. 197, L. 1967; R.C.M. 1947, 69-4707.

CHAPTER 37

FIREWORKS

Part 1 — General Provisions

Section

50-37-101. Fireworks defined.
50-37-102. Where chapter not to apply.
50-37-103. Unlawful sale, transportation, or use of fireworks.
50-37-104. Lawful sales or uses of fireworks.
50-37-105. Permissible fireworks.
50-37-106. Sale of fireworks restricted to certain dates.
50-37-107. Supervised public display of fireworks authorized.
50-37-108. Damage indemnity bond required for public display.
50-37-109. Confiscation.
50-37-110. Penalties.

Part 1

General Provisions

50-37-101. Fireworks defined. The term "fireworks" means any combustible or explosive composition or any substance, combination of substances, or article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration, or detonation and includes sky rockets, roman candles, daygo bombs, blank cartridges, toy cannons, toy canes, or toy guns in which explosives other than toy paper caps are used, the type of balloons which require fire underneath to propel them, firecrackers, torpedoes, sparklers or other fireworks of like construction, any fireworks containing any explosive or flammable compound, or any tablets or other device containing any explosive substance.

History: En. Sec. 2, Ch. 143, L. 1947; amd. Sec. 1, Ch. 136, L. 1957; amd. Sec. 1, Ch. 273, L. 1959; amd. Sec. 1, Ch. 107, L. 1961; amd. Sec. 14, Ch. 423, L. 1971; amd. Sec. 1, Ch. 79, L. 1974; amd. Sec. 17, Ch. 187, L. 1977; R.C.M. 1947, 69-2701(part).

50-37-102. Where chapter not to apply. (1) Nothing in this chapter shall be construed to prohibit the sale of any kind of fireworks to a person holding a permit from any municipality at the display covered by such permits, the use of fireworks by railroads or other transportation agencies for signal purposes or illumination or when used in quarrying or blasting or other industrial use, or the sale or use of blank cartridges for a show or theater, for signal or ceremonial purposes in athletics or sports, or for use by military organizations or organizations composed of veterans of the United States armed forces.

(2) This chapter does not apply to toy paper caps containing less than one-fourth of a grain of explosive composition per cap, to the manufacture, storage, sale, or use of signals necessary for the safe operation of railroads or other classes of public or private transportation, to the military or naval forces of the United States or this state, to peace officers, or to the sale or use of blank cartridges for ceremonial, theatrical, or athletic events.

History: (1)En. Sec. 5, Ch. 143, L. 1947; amd. Sec. 3, Ch. 273, L. 1959; Sec. 69-2704, R.C.M. 1947; (2)En. Sec. 2, Ch. 143, L. 1947; amd. Sec. 1, Ch. 136, L. 1957; amd. Sec. 1, Ch. 273, L. 1959; amd. Sec. 1, Ch. 107, L. 1961; amd. Sec. 14, Ch. 423, L. 1971; amd. Sec. 1, Ch. 79, L. 1974; amd. Sec. 17, Ch. 187, L. 1977; Sec. 69-2701, R.C.M. 1947; R.C.M. 1947, 69-2701(part), 69-2704; amd. Sec. 16, Ch. 37, L. 1979.

50-37-103. Unlawful sale, transportation, or use of fireworks. (1) It is unlawful to possess, sell, transport, or use any fireworks within the state except as provided in this chapter.

(2) It is unlawful for an individual under the age of 18 to possess for sale, sell, or offer for sale within the state permissible fireworks enumerated in 50-37-105.

(3) It is unlawful for a wholesaler to sell or offer for sale within the state fireworks except as enumerated in 50-37-105. It is lawful for a wholesaler, however, to transport fireworks within Montana for sale outside of the state.

(4) It is unlawful for an individual, firm, partnership, or corporation to discharge or cause to be discharged any pyrotechnics within the exterior boundaries of a state forest, state park, or state recreation area.

History: En. Sec. 2, Ch. 143, L. 1947; amd. Sec. 1, Ch. 136, L. 1957; amd. Sec. 1, Ch. 273, L. 1959; amd. Sec. 1, Ch. 107, L. 1961; amd. Sec. 14, Ch. 423, L. 1971; amd. Sec. 1, Ch. 79, L. 1974; amd. Sec. 17, Ch. 187, L. 1977; R.C.M. 1947, 69-2701(1), (5), (6), (8).

50-37-104. Lawful sales or uses of fireworks. It is lawful for an individual, firm, partnership, corporation, or association to possess for sale, sell or offer for sale at retail, or use within the state the permissible fireworks enumerated in 50-37-105.

History: En. Sec. 2, Ch. 143, L. 1947; amd. Sec. 1, Ch. 136, L. 1957; amd. Sec. 1, Ch. 273, L. 1959; amd. Sec. 1, Ch. 107, L. 1961; amd. Sec. 14, Ch. 423, L. 1971; amd. Sec. 1, Ch. 79, L. 1974; amd. Sec. 17, Ch. 187, L. 1977; R.C.M. 1947, 69-2701(3).

50-37-105. Permissible fireworks. Permissible fireworks, excluding sky rockets, roman candles, daygo bombs, firecrackers, and bottle rockets, include and are limited to the following:

(1) helicopter type spinners, the total pyrotechnic composition not to exceed 20 grams each in weight;

(2) cylindrical fountains, the total pyrotechnic composition not to exceed 25 grams each in weight and the inside tube diameter not to exceed three-fourths of an inch;

(3) cone fountains, the total pyrotechnic composition not to exceed 50 grams each in weight;

(4) wheels, the total pyrotechnic composition not to exceed 60 grams in weight for each driver unit (but there may be any number of drivers on any one wheel) and the inside bore of driver tubes not to be over one-half of an inch;

(5) illuminating torches and colored fire in any form, the total pyrotechnic composition not to exceed 100 grams each in weight;

(6) sparklers and dipped sticks, the total pyrotechnic composition not to exceed 100 grams each in weight (pyrotechnic composition containing any chlorate not to exceed 5 grams); and

(7) whistles without report, the total pyrotechnic composition not to exceed 40 grams each in weight.

History: En. Sec. 2, Ch. 143, L. 1947; amd. Sec. 1, Ch. 136, L. 1957; amd. Sec. 1, Ch. 273, L. 1959; amd. Sec. 1, Ch. 107, L. 1961; amd. Sec. 14, Ch. 423, L. 1971; amd. Sec. 1, Ch. 79, L. 1974; amd. Sec. 17, Ch. 187, L. 1977; R.C.M. 1947, 69-2701(4).

50-37-106. Sale of fireworks restricted to certain dates. No person, firm, or corporation may offer fireworks of any kind for sale at retail before June 24 and after July 5.

History: En. Sec. 2, Ch. 143, L. 1947; amd. Sec. 1, Ch. 136, L. 1957; amd. Sec. 1, Ch. 273, L. 1959; amd. Sec. 1, Ch. 107, L. 1961; amd. Sec. 14, Ch. 423, L. 1971; amd. Sec. 1, Ch. 79, L. 1974; amd. Sec. 17, Ch. 187, L. 1977; R.C.M. 1947, 69-2701(7).

50-37-107. Supervised public display of fireworks authorized. (1) The state fire marshal or the governing body of a city, town, or county may, under reasonable rules adopted by them, grant permits for supervised public displays of fireworks to be held by municipalities, fair associations, amusement parks, and other organizations or groups of individuals.

(2) Each display shall:

(a) be handled by a competent operator, who must be approved by the state fire marshal or the governing body of the municipality in which the display is to be held; and

(b) be located, discharged, or fired as, in the opinion of the chief of the fire department or other officer designated by the governing body of the municipality after proper inspection, not to be hazardous to persons or property.

(3) Application for permits shall be made in writing at least 15 days prior to the date of the display.

(4) After the privilege has been granted, sales, possession, use, and distribution of fireworks for the display are lawful for that purpose only.

(5) No permit granted under this section is transferable.

(6) The term "municipalities" includes cities and incorporated towns.

History: En. Sec. 3, Ch. 143, L. 1947; amd. Sec. 2, Ch. 273, L. 1959; amd. Sec. 18, Ch. 187, L. 1977; R.C.M. 1947, 69-2702; amd. Sec. 1, Ch. 164, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "The state fire marshal or the governing body" for "The state fire marshal and the governing body" in (1).

50-37-108. Damage indemnity bond required for public display. The governing body of the municipality shall require a bond deemed adequate by the municipality from the licensee in a sum not less than $500, conditioned for the payment of all damages which may be caused either to a person or persons or to property by reason of the licensed display and arising from any acts of the licensee, his agents, employees, or subcontractors..

History: En. Sec. 4, Ch. 143, L. 1947; R.C.M. 1947, 69-2703.

50-37-109. Confiscation. The state fire marshal or any sheriff, police officer, or constable shall seize, take, remove, or cause to be removed at the expense of the owner all stocks of fireworks or combustibles offered or exposed for sale, stored, or held in violation of this chapter.

History: En. Sec. 6, Ch. 143, L. 1947; R.C.M. 1947, 69-2705.

50-37-110. Penalties. Any person, firm, partnership, association, or corporation violating the provisions of this chapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $100 or more than $500 or, in the case of individuals, the members of a partnership, and the responsible officers and agents of an association or corporation, by imprisonment in the county jail for a period of not less than 30 days or more than 6 months or by both such fine and imprisonment.

History: En. Sec. 7, Ch. 143, L. 1947; amd. Sec. 4, Ch. 273, L. 1959; R.C.M. 1947, 69-2706.

CHAPTER 38

EXPLOSIVES

Part 1 — General Provisions

Section
50-38-101. Definitions.
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50-38-103. General prohibition.
50-38-104. Exception to general prohibition.
50-38-105. Exemptions.
50-38-106. General penalty.
50-38-107. Penalty when death caused by violation of chapter.
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Part 2 — Storage

50-38-201. Who may enter storage area.

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50-38-211. Explosives to be stored in conformity with quantity and distance table.
50-38-212. Quantity and distance table.
50-38-213. When quantity and distance table may be disregarded.
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50-38-221. Magazines to be of two classes.
50-38-222. First-class magazines.
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Sections 50-38-224 through 50-38-230 reserved.
50-38-231. Report required prior to storing of explosives.
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50-38-233. Reduction of allowable storage amounts — modification of certificate.
50-38-234. Certificate valid until canceled.
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Part 3 — Sale and Transportation

50-38-301. Records of transactions required.
50-38-302. Disposing of explosives to minors unlawful.
50-38-303. Transportation of explosives with passengers.
50-38-304. Transportation vehicle to bear warning signs.

Part 1

General Provisions

50-38-101. Definitions. (1) The term "building" or "buildings", as used herein, shall be held to mean and include only a building or buildings occupied in whole or in part as a habitation for human beings or any church, schoolhouse, railroad station, store, or other building where people are accustomed to assemble.

(2) The term "efficient artificial barricade", as used herein, shall be held to mean an artificial mound or properly riveted wall of earth of a minimum thickness of 3 feet.

(3) The term "explosive" or "explosives", whenever used in this chapter, shall be held to mean and include any chemical compound or mechanical mixture that contains any oxidizing and combustible units or other ingredients in such proportions, quantities, or packing that an ignition by fire, by friction, by concussion, by percussion, or by detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or of destroying life or limb.

(4) The term "factory building", as used herein, shall be held to mean any building or other structure containing explosives in which the manufacture of explosives or any part of the manufacture is carried on.

(5) The term "highway", as used herein, shall be held to mean and include any public street, public alley, or public road.

(6) The word "magazine", as used herein, means any building or other structure, other than a factory building, used for the storage of explosives.

(7) The term "person", as used herein, shall be held to mean and include firms and corporations as well as natural persons.

(8) The term "railroad", as used herein, shall be held to mean and include any steam, electric, or other railroad which carries passengers for hire.

(9) Words used in the singular number shall include the plural, and the plural the singular.

History: En. Sec. 1, Ch. 129, L. 1917; re-en. Sec. 2786, R.C.M. 1921; re-en. Sec. 2786, R.C.M. 1935; R.C.M. 1947, 69-1901.

50-38-102. Existing ordinances not affected. Nothing contained in this chapter shall affect any existing ordinance or rule of any city or municipality not less restrictive than this chapter governing the manufacture, storage, and sale of explosives or affect, modify, or limit the power of cities or municipalities in this state to make ordinances or rules not less restrictive than this chapter governing the manufacture, storage, sale, use, or transportation of explosives within their respective corporate limits.

History: En. Sec. 19, Ch. 129, L. 1917; re-en. Sec. 2804, R.C.M. 1921; re-en. Sec. 2804, R.C.M. 1935; R.C.M.1947, 69-1919.

50-38-103. General prohibition. No person shall manufacture, have, keep, or store explosives in this state except in compliance with this chapter.

History: En. Sec. 2, Ch. 129, L. 1917; re-en. Sec. 2787, R.C.M. 1921; re-en. Sec. 2787, R.C.M. 1935; R.C.M. 1947, 69-1902(part).

50-38-104. Exception to general prohibition. Explosives may be manufactured without compliance with this chapter in the laboratories of schools, colleges, and similar institutions for the purpose of investigation and instruction.

History: En. Sec. 2, Ch. 129, L. 1917; re-en. Sec. 2787, R.C.M. 1921; re-en. Sec. 2787, R.C.M. 1935; R.C.M. 1947, 69-1902(part).

50-38-105. Exemptions. (1) Nothing contained in this chapter shall apply to the regular military or naval forces of the United States, the duly authorized militia of any state or territory, the police or fire departments of this state or of any municipality or county within this state, providing the same are acting in their official capacity and in the proper performance of their duties.

(2) Nothing contained in this chapter shall apply to explosives while being transported upon vessels or railroad cars in conformity with the regulations adopted by the interstate commerce commission, to transportation or use of blasting explosives for agricultural or prospecting purposes in quantity not exceeding 200 pounds at any one time, to any explosives in quantities not exceeding 5 pounds at any one time, or to any person or persons carrying ammunition in reasonable amounts.

History: En. Sec. 18, Ch. 129, L. 1917; re-en. Sec. 2803, R.C.M. 1921; re-en. Sec. 2803, R.C.M. 1935; R.C.M. 1947, 69-1918.

50-38-106. General penalty. Any person or association of persons violating any of the provisions of this chapter shall be punished by imprisonment in the penitentiary not exceeding 5 years, by fine not exceeding $5,000, or by both such fine and imprisonment.

History: En. Sec. 714, Pen. C. 1895; re-en. Sec. 8552, Rev. C. 1907; re-en. Sec. 2813, R.C.M. 1921; re-en. Sec. 2813, R.C.M. 1935; R.C.M. 1947, 69-1928.

50-38-107. Penalty when death caused by violation of chapter. When the death of any person is caused by the explosion of any powder, gunpowder, giant or Hercules powder, giant caps, or other highly explosive substance that has been stored, kept, handled, or transported contrary to the provisions of this chapter, the person or persons who have unlawfully stored, kept, handled, or transported such explosives or who may have knowingly or negligently permitted their agents, servants, or employees to unlawfully store, keep, handle, or transport the same are guilty of negligent homicide and on conviction shall be punished by imprisonment in the state prison for a period not exceeding 10 years or by a fine not exceeding $50,000, or both.

History: En. Sec. 715, Pen. C. 1895; re-en. Sec. 8553, Rev. C. 1907; re-en. Sec. 2814, R.C.M. 1921; re-en. Sec. 2814, R.C.M. 1935; amd. Sec. 56, Ch. 359, L. 1977; R.C.M. 1947, 69-1929; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

50-38-108. Explosives — misrepresentations concerning percentage of nitroglycerine a misdemeanor. Any person or corporation engaged in the business of selling blasting or giant powder, by whatever name the same shall be known, containing nitroglycerine or equivalent explosive compound in any form who shall sell or vend any such blasting powder upon the representation that the same contains a certain percentage or proportion of nitroglycerine or equivalent explosive compound or who, being applied to for blasting powder containing a certain percentage or proportion of nitroglycerine or equivalent explosive compound, shall sell or deliver any such blasting powder containing a less percentage or proportion of nitroglycerine or equivalent explosive compound than represented or than such powder as was applied for shall be deemed guilty of a misdemeanor and, on conviction, shall be punished by a fine of not more than $1,000 or less than $100.

History: En. Sec. 1, Ch. 124, L. 1909; re-en. Sec. 2805, R.C.M. 1921; re-en. Sec. 2805, R.C.M. 1935; R.C.M. 1947, 69-1920.

Part 2

Storage

50-38-201. Who may enter storage area. No person, except an official as authorized herein or a person authorized to do so by the owner or his agent, shall enter any factory building, magazine, or car containing explosives in this state.

History: En. Sec. 12, Ch. 129, L. 1917; re-en. Sec. 2797, R.C.M. 1921; re-en. Sec. 2797, R.C.M. 1935; R.C.M. 1947, 69-1912.

50-38-202. When firearms not to be discharged. No person shall discharge any firearms at or against any magazine or factory building.

History: En. Sec. 14, Ch. 129, L. 1917; re-en. Sec. 2799, R.C.M. 1921; re-en. Sec. 2799, R.C.M. 1935; R.C.M. 1947, 69-1914.

50-38-203. Storage of explosives in mines. No person, company, or corporation shall store, deposit, or keep in any mine a greater quantity than 3,000 pounds of blasting powder, giant or Hercules powder, or other highly explosive substance, and no explosives named in this section shall be stored, deposited, or kept in any place where its accidental explosion would cut off the escape of miners working in said mine.

History: En. Sec. 708, Pen. C. 1895; re-en. Sec. 8546, Rev. C. 1907; re-en. Sec. 2807, R.C.M. 1921; re-en. Sec. 2807, R.C.M. 1935; R.C.M. 1947, 69-1922.

50-38-204. Storage of explosives in cities. (1) No person, company, or corporation may store, deposit, or keep within 1 mile of the limits of a city, town, or village any powder, gunpowder, giant or Hercules powder, or other highly explosive substance in excess of 100 pounds or 1,000 giant caps, nor may explosives be stored, deposited, or kept in any quantity whatever within 1 mile of a city, town, or village except in a magazine constructed as provided for in 50-38-221 through 50-38-223.

(2) This section does not prevent a person, company, or corporation operating a mine within 1 mile of the limits of a city, town, or village from storing powder for use in the mine in the manner prescribed in 50-38-203 and 50-38-221 through 50-38-223.

(3) This section does not prevent the keeping of a reasonable amount of gunpowder, not exceeding 50 pounds, in a safe place for sale.

History: En. Sec. 709, Pen. C. 1895; re-en. Sec. 8547, Rev. C. 1907; re-en. Sec. 2808, R.C.M. 1921; re-en. Sec. 2808, R.C.M. 1935; amd. Sec. 14, Ch. 187, L. 1977; R.C.M. 1947, 69-1923.

50-38-205. Explosives to be kept in containers. (1) Except only at a factory building and except while being used, no person shall have, keep, or store explosives at any place within this state unless such explosives are completely enclosed or encased in tight metallic, wooden, or fiber containers.

(2) No person having explosives in his possession or control shall, under any circumstances, permit or allow any grains or particles to be or remain on the outside or about the containers in which such explosives are held.

(3) All containers in which explosives are held shall be plainly marked with the name of the explosive contained therein.

History: En. Sec. 6, Ch. 129, L. 1917; re-en. Sec. 2791, R.C.M. 1921; re-en. Sec. 2791, R.C.M. 1935; R.C.M. 1947, 69-1906(part).

50-38-206. Explosives to be stored in magazines. Except while being transported, used, or in the custody of a common carrier awaiting shipment or pending delivery to a consignee during the time permitted by federal law, explosives shall be kept and stored in a magazine constructed and operated as provided in 50-38-221 through 50-38-223.

History: En. Sec. 6, Ch. 129, L. 1917; re-en. Sec. 2791, R.C.M. 1921; re-en. Sec. 2791, R.C.M. 1935; R.C.M. 1947, 69-1906(part).

50-38-207. Storage of blasting caps. No blasting caps, other detonating or fulminating caps, or detonators shall be kept or stored in any magazines in which other explosives are kept or stored.

History: En. Sec. 8, Ch. 129, L. 1917; re-en. Sec. 2793, R.C.M. 1921; R.C.M. 1947, 69-1908.

50-38-208 through 50-38-210 reserved.

50-38-211. Explosives to be stored in conformity with quantity and distance table. All factory buildings and magazines in which explosives are had, kept, or stored must be located at distances from buildings, railroads, and highways in conformity with the quantity and distance table set out in 50-38-212, and this table shall be the basis on which applications for certificate of compliance, as provided in 50-38-231 through 50-38-235, shall be made and the certificate of compliance issued.

History: En. Sec. 3, Ch. 129, L. 1917; re-en. Sec. 2788, R.C.M. 1921; re-en. Sec. 2788, R.C.M. 1935; R.C.M. 1947, 69-1903(part).

50-38-212. Quantity and distance table. The quantity and distance table governing the manufacture, keeping, and storage of explosives is as follows:

QUANTITY AND DISTANCE TABLE

Column One				Column Two	Column Three	Column Four
Quantity that may be had, kept or stored				Distance from Nearest Building	Distance from Nearest Railway	Distance from Nearest Highway
Blasting and Electric Blasting Caps		Other Explosives				
Number Over	Number Not Over	Pounds Over	Pounds Not Over	Feet	Feet	Feet
1,000	5,000			30	20	10
5,000	10,000			60	40	20
10,000	20,000			120	70	35
20,000	25,000		50	145	90	45
25,000	50,000	50	100	240	140	70
50,000	100,000	100	200	360	220	110
100,000	150,000	200	300	520	310	150
150,000	200,000	300	400	640	380	190
200,000	250,000	400	500	720	430	220

Table Continued on Next Page

250,000	300,000	500	600	800	480	240
300,000	350,000	600	700	860	520	260
350,000	400,000	700	800	920	550	280
400,000	450,000	800	900	980	590	300
450,000	500,000	900	1,000	1,020	610	310
500,000	750,000	1,000	1,500	1,060	640	320
750,000	1,000,000	1,500	2,000	1,200	720	360
1,000,000	1,500,000	2,000	3,000	1,300	780	390
1,500,000	2,000,000	3,000	4,000	1,420	850	420
2,000,000	2,500,000	4,000	5,000	1,500	900	450
2,500,000	3,000,000	5,000	6,000	1,560	940	470
3,000,000	3,500,000	6,000	7,000	1,610	970	490
3,500,000	4,000,000	7,000	8,000	1,660	1,000	500
4,000,000	4,500,000	8,000	9,000	1,700	1,020	510
4,500,000	5,000,000	9,000	10,000	1,740	1,040	520
5,000,000	7,500,000	10,000	15,000	1,780	1,070	530
7,500,000	10,000,000	15,000	20,000	1,950	1,170	580
10,000,000	12,500,000	20,000	25,000	2,110	1,270	630
12,500,000	15,000,000	25,000	30,000	2,260	1,360	680
15,000,000	17,500,000	30,000	35,000	2,410	1,450	720
17,500,000	20,000,000	35,000	40,000	2,550	1,530	760
		40,000	45,000	2,680	1,610	800
		45,000	50,000	2,800	1,680	840
		50,000	55,000	2,920	1,750	880
		55,000	60,000	3,030	1,820	910
		60,000	65,000	3,130	1,880	940
		65,000	70,000	3,220	1,940	970
		70,000	75,000	3,310	1,990	1,000
		75,000	80,000	3,390	2,040	1,020
		80,000	85,000	3,460	2,080	1,040
		85,000	90,000	3,520	2,120	1,060
		90,000	95,000	3,580	2,150	1,080
		95,000	100,000	3,630	2,180	1,090
		100,000	125,000	3,670	2,200	1,100
		125,000	150,000	3,800	2,280	1,140
		150,000	175,000	3,930	2,360	1,180
		175,000	200,000	4,060	2,440	1,220
		200,000	225,000	4,190	2,520	1,260
		225,000	250,000	4,310	2,590	1,300
		250,000	275,000	4,430	2,660	1,340
		275,000	300,000	4,550	2,730	1,380

History: En. Sec. 3, Ch. 129, L. 1917; re-en. Sec. 2788, R.C.M. 1921; re-en. Sec. 2788, R.C.M. 1935; R.C.M. 1947, 69-1903(part).

50-38-213. When quantity and distance table may be disregarded. The quantity and distance table may be disregarded and a certificate of compliance issued for two second-class magazines (see 50-38-221 through 50-38-223) in any building not otherwise prohibited by law if the contents and location of the magazine are as follows:

(1) One second-class magazine containing not more than 50 pounds of explosives may be allowed if the said second-class magazine is placed on wheels and located not more than 10 feet from, on the same floor with, and directly opposite to the entrance on the floor nearest the street level.

(2) One second-class magazine containing not more than 5,000 blasting caps may be allowed if the said second-class magazine is placed on wheels and located on the floor nearest the street level.

History: En. Sec. 3, Ch. 129, L. 1917; re-en. Sec. 2788, R.C.M. 1921; re-en. Sec. 2788, R.C.M. 1935; R.C.M. 1947, 69-1903(part).

50-38-214. Reduction of distance. Whenever the building, railroad, or highway to be protected is effectually screened from the factory building or magazine where explosives are had, kept, or stored, either by natural features of the ground or by an efficient artificial barricade of such height that any straight line drawn from the top of any side wall of the factory building or magazine to any part of the building to be protected will pass through such intervening natural or efficient artificial barricade and any straight line drawn from the top of any side wall of the factory building or magazine to any point 12 feet above the center of the railroad or highway to be protected will pass through such intervening natural or efficient artificial barricade, the applicable distances given in columns 2, 3, and 4 of the quantity and distance table may be reduced one-half.

History: En. Sec. 5, Ch. 129, L. 1917; re-en. Sec. 2790, R.C.M. 1921; re-en. Sec. 2790, R.C.M. 1935; R.C.M. 1947, 69-1905.

50-38-215. Maximum allowable for storage. No quantity in excess of 300,000 pounds or, in case of blasting caps, no number in excess of 20 million caps shall be had, kept, or stored in any factory building or magazine in this state.

History: En. Sec. 4, Ch. 129, L. 1917; re-en. Sec. 2789, R.C.M. 1921; re-en. Sec. 2789, R.C.M. 1935; R.C.M. 1947, 69-1904.

50-38-216 through 50-38-220 reserved.

50-38-221. Magazines to be of two classes. Magazines in which explosives may lawfully be kept or stored shall be of two classes, as set out in 50-38-222 and 50-38-223.

History: En. Sec. 7, Ch. 129, L. 1917; re-en. Sec. 2792, R.C.M. 1921; re-en. Sec. 2792, R.C.M. 1935; R.C.M. 1947, 69-1907(part).

50-38-222. First-class magazines. (1) Magazines of the first class shall consist of those containing explosives exceeding 50 pounds, shall be constructed of brick, concrete, iron, or wood covered with iron, and shall have no openings except for ventilation and entrance.

(2) The doors of such magazine must at all times be kept closed and locked except when necessarily open for the purpose of storing or removing explosives by persons lawfully entitled to enter the same.

(3) Every such magazine shall have sufficient openings for ventilation, which must be screened in such manner as to prevent the entrance of sparks of fire through the same.

(4) Upon each end of such magazine, above the side walls or upon its barricade, there shall at all times be conspicuously posted a sign with the words "magazine—explosives—dangerous" legibly printed in letters not less than 6 inches high.

(5) No matches or fire of any kind shall at any time be permitted at any such magazine.

(6) No package of explosives shall at any time be opened within 50 feet of any magazine, nor shall any explosives be kept therein except in the original containers.

(7) Magazines in which more than 50 pounds of explosives are kept and stored must be detached from other structures. Magazines where more than

5,000 pounds of explosives are kept and stored must be located at least 200 feet from any other magazine. Magazines where quantities of explosives over 25,000 pounds are kept and stored must have an increase over 200 feet of 2 ⅔ feet for each 1,000 pounds of explosives in excess of 25,000 pounds. Where magazines are protected one from the other by a natural or efficient artificial barricade, the distance above specified may be reduced one-half.

History: En. Sec. 7, Ch. 129, L. 1917; re-en. Sec. 2792, R.C.M. 1921; re-en. Sec. 2792, R.C.M. 1935; R.C.M. 1947, 69-1907(a).

50-38-223. Second-class magazines. (1) Magazines of the second class shall be made of fire-proof material or wood covered with sheet iron, and no more than 50 pounds of explosives shall at any time be kept or stored therein and, except when necessarily opened for use by authorized persons, shall at all times be kept securely locked.

(2) Upon each magazine there shall at all times be kept conspicuously posted a sign with the words "magazine—explosives—dangerous" legibly printed, and not more than two such magazines shall be had or kept in any building.

History: En. Sec. 7, Ch. 129, L. 1917; re-en. Sec. 2792, R.C.M. 1921; re-en. Sec. 2792, R.C.M. 1935; R.C.M. 1947, 69-1907(b).

50-38-224 through 50-38-230 reserved.

50-38-231. Report required prior to storing of explosives. All persons engaging in keeping or storing explosives after July 1, 1917, shall, before engaging in the keeping or storing of explosives, make a report in writing subscribed to by such persons or their agent to the state fire marshal stating:

(1) the location of the magazine if then existing or, in case of a new magazine, the proposed location of such magazine;

(2) the kind of explosives that are kept or stored or intended to be kept or stored and the maximum quantity that is intended to be kept or stored;

(3) the distance that such magazine is located or intended to be located from the nearest buildings, railroads, and highways.

History: En. Sec. 9, Ch. 129, L. 1917; re-en. Sec. 2794, R.C.M. 1921; re-en. Sec. 2794, R.C.M. 1935; R.C.M. 1947, 69-1909(part).

50-38-232. Certificate of compliance to be issued prior to storing of explosives. (1) The state fire marshal shall, as soon as may be after receiving such report required by 50-38-231, cause an inspection to be made of the magazine, if then constructed, and in the case of a new magazine, as soon as may be after same is found to be constructed in accordance with the specifications provided in 50-38-221 through 50-38-223.

(2) The state fire marshal shall determine the amount of explosives that may be kept and stored in such magazine by reference to the quantity and distance table set forth in 50-38-212 and shall issue a certificate to the person applying therefor showing compliance with the provisions of this chapter, which certificate shall set forth the maximum quantity of explosives that may be had, kept, or stored in said magazine.

History: En. Sec. 9, Ch. 129, L. 1917; re-en. Sec. 2794, R.C.M. 1921; re-en. Sec. 2794, R.C.M. 1935; R.C.M. 1947, 69-1909(part).

50-38-233. Reduction of allowable storage amounts — modification of certificate. (1) Notwithstanding the certificate of compliance, the amounts of explosives which may be lawfully had, kept, or stored in said factory or magazine must be reduced in accordance with the quantity and distance table to conform to changed conditions such as:

(a) the erection of buildings nearer said magazine;

(b) the construction of railroads nearer said magazine; or

(c) the opening for public travel of highways nearer said magazine.

(2) The state fire marshal shall modify or cancel such certificate in accordance with the changed conditions.

History: **En. Sec. 9, Ch. 129, L. 1917; re-en. Sec. 2794, R.C.M. 1921; re-en. Sec. 2794, R.C.M. 1935; R.C.M. 1947, 69-1909(part).**

50-38-234. Certificate valid until canceled. Such certificate of compliance shall be valid until canceled for one or more of the causes hereinafter provided.

History: **En. Sec. 9, Ch. 129, L. 1917; re-en. Sec. 2794, R.C.M. 1921; re-en. Sec. 2794, R.C.M. 1935; R.C.M. 1947, 69-1909(part).**

50-38-235. Cancellation of certificate. (1) Whenever any person to whom a certificate of compliance has been issued keeps or stores in the magazine covered by such certificate of compliance any quantity of explosives in excess of the maximum amount set forth in said certificate of compliance or whenever any person fails for 30 days to pay the annual license fee after the same becomes due, the state fire marshal is authorized to cancel such certificate of compliance.

(2) Whenever a certificate of compliance is canceled by the state fire marshal for any cause hereinbefore specified, the state fire marshal shall notify the person to whom such certificate of compliance is issued of the fact of such cancellation and shall in said notice direct the removal of all explosives stored in said magazine within 10 days from the giving of said notice.

(3) Failure to remove the explosives stored in said magazine within the time specified in said notice shall constitute a violation of this chapter.

History: **En. Sec. 9, Ch. 129, L. 1917; re-en. Sec. 2794, R.C.M. 1921; re-en. Sec. 2794, R.C.M. 1935; R.C.M. 1947, 69-1909(part).**

Part 3

Sale and Transportation

50-38-301. Records of transactions required. (1) Every person, company, or corporation manufacturing, storing, selling, transferring, dealing in, or in any manner disposing of any powder, gunpowder, giant or Hercules powder, giant caps, or other highly explosive substances shall keep in a book for that purpose an accurate record of all transactions, with the date thereof, relating to the receiving and disposing of the same.

(2) The record shall show the amount of each such explosive received, by whom transported or conveyed, and each and every sale or other disposition made of such explosive, with the amount thereof and the name of the person to whom delivery of the same was made, who shall be required to receipt therefor.

(3) Such record shall at all times be open to the inspection of the state inspector of mines or any peace officer.

History: En. Sec. 707, Pen. C. 1895; re-en. Sec. 8545, Rev. C. 1907; re-en. Sec. 2806, R.C.M. 1921; re-en. Sec. 2806, R.C.M. 1935; R.C.M. 1947, 69-1921.

50-38-302. Disposing of explosives to minors unlawful. It shall be unlawful to sell, give away, or otherwise dispose of or deliver to any person under 18 years of age any explosives, whether said person is acting for himself or for any other person.

History: En. Sec. 2, Ch. 129, L. 1917; re-en. Sec. 2787, R.C.M. 1921; re-en. Sec. 2787, R.C.M. 1935; R.C.M. 1947, 69-1902(part).

50-38-303. Transportation of explosives with passengers. (1) It shall be unlawful to knowingly transport, deliver, or cause to be delivered giant or Hercules powder, giant caps, nitroglycerine, nitroleum, blasting or nitrated oil, powder mixed therewith or fiber saturated therewith, or any other highly explosive substance in any quantities whatever on any vessel or vehicle carrying passengers by land or water between any points within the state of Montana.

(2) On mixed trains intended for service on railroad lines leading to mining localities or camps explosive substances may be lawfully carried by hanging a placard on each side of the car or cars carrying the explosives reading: "This car is loaded with powder"—each letter of said placard to be at least 2 inches long, but this proviso shall not permit the carrying of any explosive substances in the same car or coach in which the passengers are carried.

History: En. Sec. 1, p. 246, L. 1897; re-en. Sec. 8550, Rev. C. 1907; re-en. Sec. 2811, R.C.M. 1921; re-en. Sec. 2811, R.C.M. 1935; R.C.M. 1947, 69-1926.

50-38-304. Transportation vehicle to bear warning signs. Each vehicle in which explosives are transported, transferred, or delivered shall bear on each side a sign having the words "explosives—dangerous" in conspicuous letters not less than 2 inches in height.

History: En. Sec. 711, Pen. C. 1895; re-en. Sec. 8549, Rev. C. 1907; re-en. Sec. 2810, R.C.M. 1921; re-en. Sec. 2810, R.C.M. 1935; amd. Sec. 15, Ch. 187, L. 1977; R.C.M. 1947, 69-1925; amd. Sec. 17, Ch. 37, L. 1979.

CHAPTER 39

FIRE PROTECTION EQUIPMENT

Part 1 — Regulation of Sales, Installation, and Servicing

Section
50-39-101. Certificate of registration, permit, and license required.
50-39-102. Application for certificate, permit, and license.
50-39-103. Inspections and examinations authorized.
50-39-104. Revocations and suspensions authorized.
50-39-105. Fees.

Part 2 — Standardization

50-39-201. Fire protection equipment to be equipped with standard thread.

50-39-202. Fire marshal to direct standardization.
50-39-203. Notice of necessary changes — converting equipment.

Part 1

Regulation of Sales, Installation, and Servicing

50-39-101. Certificate of registration, permit, and license required. A natural person must obtain a certificate of registration from the state fire marshal prior to servicing or installing of fire extinguishers, fire alarm systems, or fire extinguishing systems. A person or firm must obtain from the fire marshal a permit to sell or a license to install fire extinguishers, fire alarm systems, or fire extinguishing systems prior to engaging in such business.

History: En. 82-1202.1 by Sec. 3, Ch. 229, L. 1967; amd. Sec. 1, Ch. 120, L. 1969; amd. Sec. 25, Ch. 366, L. 1969; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 1, Ch. 426, L. 1975; R.C.M. 1947, 82-1202.1(part).

50-39-102. Application for certificate, permit, and license. (1) Applications for licenses, permits, or certificates shall be made on a form prescribed by the state fire marshal.

(2) The fire marshal shall issue a license to an applicant who submits satisfactory proof that he is properly equipped and staffed to provide the services to be licensed and who pays the required fee.

(3) The fire marshal shall issue a certificate of registration to an applicant who scores a passing grade on an examination devised by the fire marshal and who pays the required fee.

(4) The fire marshal shall issue a sales permit to an applicant who submits the information required by the fire marshal on the application form, who submits satisfactory proof that he deals only in equipment that meets the standards and regulations of the state fire marshal, and who pays the required fee.

History: En. 82-1202.1 by Sec. 3, Ch. 229, L. 1967; amd. Sec. 1, Ch. 120, L. 1969; amd. Sec. 25, Ch. 366, L. 1969; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 1, Ch. 426, L. 1975; R.C.M. 1947, 82-1202.1(4)(a).

50-39-103. Inspections and examinations authorized. The state fire marshal may conduct inspections, examinations, or hearings prior to the issuance of licenses, permits, or certificates.

History: En. 82-1202.1 by Sec. 3, Ch. 229, L. 1967; amd. Sec. 1, Ch. 120, L. 1969; amd. Sec. 25, Ch. 366, L. 1969; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 1, Ch. 426, L. 1975; R.C.M. 1947, 82-1202.1(part).

50-39-104. Revocations and suspensions authorized. The state fire marshal may revoke, suspend, or refuse to issue a license, permit, or certificate for violation of the provisions of this part or any rules promulgated by the fire marshal under applicable law.

History: En. 82-1202.1 by Sec. 3, Ch. 229, L. 1967; amd. Sec. 1, Ch. 120, L. 1969; amd. Sec. 25, Ch. 366, L. 1969; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 1, Ch. 426, L. 1975; R.C.M. 1947, 82-1202.1(part).

50-39-105. Fees. (1) The state fire marshal or his representative shall charge a fee, not to exceed a total of $25, for the inspection and issuance of licenses, permits, and certificates.

(2) All fees collected under this section shall be paid into the general fund.

History: En. 82-1202.1 by Sec. 3, Ch. 229, L. 1967; amd. Sec. 1, Ch. 120, L. 1969; amd. Sec. 25, Ch. 366, L. 1969; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 1, Ch. 426, L. 1975; R.C.M. 1947, 82-1202.1(4)(c), (4)(d).

Part 2

Standardization

50-39-201. Fire protection equipment to be equipped with standard thread. Hereafter, all equipment for fire protection purposes purchased by state and municipal authorities or any other authorities having charge of public property shall be equipped with the standard thread for fire hose couplings and hydrant fittings designated as the national standard as adopted by the national board of fire underwriters, which standard is hereby designated as the standard for such equipment in the state.

History: En. Sec. 1, Ch. 53, L. 1929; re-en. Sec. 2762.1, R.C.M. 1935; R.C.M. 1947, 82-1233.

50-39-202. Fire marshal to direct standardization. The standardization of existing fire protection equipment in this state shall be arranged for and carried out by or under the direction of the state fire marshal of Montana. The state fire marshal is authorized to proceed to make such changes as may be necessary to standardize all existing fire protection equipment in this state immediately after March 1, 1929. He shall provide such appliances as are necessary for carrying on this work and shall proceed with such standardization as rapidly as possible and complete such work at the earliest date circumstances will permit.

History: En. Sec. 2, Ch. 53, L. 1929; re-en. Sec. 2762.2, R.C.M. 1935; R.C.M. 1947, 82-1234.

50-39-203. Notice of necessary changes — converting equipment. The state fire marshal shall notify industrial establishments and property owners having equipment for fire protection purposes which it may be necessary for a fire department to use in protecting the property or putting out fire of the changes necessary to bring their equipment up to the requirements of the standard hereby established and shall render them such assistance as may be available in converting their equipment to standard requirements.

History: En. Sec. 3, Ch. 53, L. 1929; re-en. 2762.3, R.C.M. 1935; R.C.M. 1947, 82-1235.

CHAPTER 40

SMOKING IN PUBLIC PLACES

Part 1 — Montana Clean Indoor Air Act

Section
50-40-101. Short title.
50-40-102. Purpose.

50-40-103. Definitions.
50-40-104. Designation or reservation of smoking or nonsmoking areas — notice.
50-40-105. No smoking signs in certain places.
50-40-106. Requirements of health care facilities.
50-40-107. Exemptions.
50-40-108. Enforcement.
50-40-109. Penalties.

Part 1

Montana Clean Indoor Air Act

50-40-101. Short title. This part may be cited as the "Montana Clean Indoor Air Act of 1979".

History: En. Sec. 1, Ch. 368, L. 1979.

50-40-102. Purpose. The purpose of this part is to protect the health of nonsmokers in public places and to provide for reserved areas in some public places for those who choose to smoke.

History: En. Sec. 2, Ch. 368, L. 1979.

50-40-103. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(2) "Enclosed public place" means any indoor area, room, or vehicle used by the general public or serving as a place of work, including but not limited to restaurants, stores, offices, trains, buses, educational or health care facilities, auditoriums, arenas, and assembly and meeting rooms open to the public.

(3) "Establishment" means an enterprise under one roof that serves the public and for which a single person, agency, corporation, or legal entity is responsible.

(4) "Person" means an individual, partnership, corporation, association, political subdivision, or other entity.

(5) "Smoking" or "to smoke" includes the act of lighting, smoking, or carrying a lighted cigar, cigarette, pipe, or any smokable product.

(6) "Smoking area" means a designated area in which smoking is permitted.

(7) "Place of work" means an enclosed room where more than one employee works.

History: En. Sec. 3, Ch. 368, L. 1979; amd. Sec. 1, Ch. 460, L. 1981.

Compiler's Comments

1981 Amendment: Added "open to the public" at the end of (2); inserted subsections (4) and (6); and substituted "Place of work" for "Working area" in (7).

50-40-104. Designation or reservation of smoking or nonsmoking areas — notice. (1) Except for those enclosed public places provided for in 50-40-105, the proprietor or manager of an enclosed public place shall:

(a) designate nonsmoking areas with easily readable signs; or

(b) reserve a part of the public place for nonsmokers and post easily readable signs designating a smoking area; or

(c) designate the entire area as a smoking area by posting a sign that is clearly visible to the public stating this designation.

(2) The proprietor or manager of an establishment containing enclosed public places shall post a sign in a conspicuous place at all public entrances to the establishment stating, in a manner that can be easily read and understood, whether or not areas within the establishment have been reserved for nonsmokers.

(3) The proprietor or manager of an establishment containing both a restaurant and a tavern, in which some patrons choose to eat their meals in the tavern, is not required by this part to post a sign described in subsection (2) in the tavern area of the establishment.

History: **En. Sec. 4, Ch. 368, L. 1979; amd. Sec. 2, Ch. 460, L. 1981.**

Compiler's Comments

1981 Amendment: Added "by posting a sign that is clearly visible to the public stating this designation" at the end of (1)(c); and added subsection (3).

50-40-105. No smoking signs in certain places. No smoking signs shall be conspicuously posted in elevators, museums, galleries, kitchens, and libraries of any establishment doing business with the general public.

History: **En. Sec. 5, Ch. 368, L. 1979.**

50-40-106. Requirements of health care facilities. (1) Health care facilities shall:

(a) ask all in-patients, prior to admission, to designate their preference for a nonsmoking or smoking patient room and, when possible, accommodate such a preference;

(b) prohibit smoking in all kitchens, laboratories, and corridors;

(c) prohibit smoking in storage areas for supplies or materials and wherever flammable liquids, gases, or oxygen is stored or in use;

(d) provide a nonsmoking area in all waiting rooms;

(e) prohibit employees from smoking in patient rooms; and

(f) require visitors to obtain express approval from all patients in the patient room, or from the patients' physicians, prior to smoking.

(2) Nothing in this section shall prohibit a health care facility from banning smoking on all or a part of its premises.

(3) All areas of a health care facility not specifically referred to in this section may be considered smoking areas unless posted otherwise.

History: **En. Sec. 6, Ch. 368, L. 1979.**

50-40-107. Exemptions. The following shall be exempt from this part:

(1) restrooms;

(2) taverns or bars where meals are not served;

(3) vehicles or rooms seating six or fewer members of the public.

History: **En. Sec. 7, Ch. 368, L. 1979.**

50-40-108. Enforcement. The provisions of this part shall be supervised and enforced by the local boards of health under the direction of the department.

History: **En. Sec. 8, Ch. 368, L. 1979.**

50-40-109. Penalties. A person who fails to designate or reserve a smoking or nonsmoking area in his establishment as provided for in 50-40-104 is guilty of a misdemeanor and is subject to a fine of not more than $25.

History: **En. Sec. 3, Ch. 460, L. 1981.**

Compiler's Comments

Codification Instruction: Section 4, Ch. 460, L. 1981, provided: "Section 3 is intended to be codified as an integral part of Title 50, chapter 40, part 1, and the provisions of Title 50, chapter 40, part 1, apply to section 3."

CHAPTER 41

LAETRILE

Part 1 — General Provisions

Section
50-41-101. Laetrile defined.
50-41-102. Laetrile authorized.
50-41-103. Hospital may not interfere.
50-41-104. Health care facility liability.
50-41-105. Physician not subject to disciplinary action.
50-41-106. Laetrile not endorsed — permitted as a dietary supplement.
50-41-107. Laetrile optional.

Part 1

General Provisions

50-41-101. Laetrile defined. As used in this chapter, "laetrile", also known as B-17, means a cyanogenetic glycoside, which is processed from the seeds of certain fruits, including apricots, peaches, and plums.

History: **En. Sec. 1, Ch. 454, L. 1979.**

50-41-102. Laetrile authorized. The manufacture, sale, possession, and distribution of laetrile is lawful within this state.

History: **En. Sec. 2, Ch. 454, L. 1979.**

50-41-103. Hospital may not interfere. A hospital or health care facility may not interfere with the physician-patient relationship by restricting or forbidding the use of laetrile when prescribed or administered by a physician and requested by a patient.

History: **En. Sec. 3, Ch. 454, L. 1979.**

50-41-104. Health care facility liability. No hospital, health care facility, or employee thereof shall be held liable for the administration of laetrile to any person at the direction of a licensed physician.

History: **En. Sec. 4, Ch. 454, L. 1979.**

50-41-105. Physician not subject to disciplinary action. A physician may not be subjected to disciplinary action by the board of medical examiners for prescribing or administering laetrile to a patient under his care as an adjunct to recognized, customary, or accepted modes of therapy in the treatment of any malignancy, disease, illness, or physical condition.

History: **En. Sec. 5, Ch. 454, L. 1979.**

50-41-106. Laetrile not endorsed — permitted as a dietary supplement. This chapter:

(1) is not an endorsement of laetrile for the treatment of any malignancy, disease, illness, or physical condition;

(2) does not prevent a physician from prescribing laetrile as a dietary supplement to a patient not suffering from any known malignancy, disease, illness, or physical condition.

History: **En. Sec. 6, Ch. 454, L. 1979.**

50-41-107. Laetrile optional. This chapter does not require:

(1) a physician, pharmacist, pharmacy, manufacturer, or distributor to manufacture, sell, or distribute laetrile;

(2) a physician to prescribe laetrile for any patient.

History: **En. Sec. 7, Ch. 454, L. 1979.**

CHAPTER 42

DIMETHYL SULFOXIDE (DMSO)

Part 1 — General Provisions

Section
50-42-101. DMSO defined.
50-42-102. DMSO authorized.
50-42-103. Hospital not to interfere.
50-42-104. Health care facility nonliability.
50-42-105. Physician not subject to disciplinary action.
50-42-106. DMSO not endorsed.
50-42-107. DMSO optional.

Part 1

General Provisions

Part Compiler's Comments

1981 Title: The title to Ch. 333, L. 1981 (HB 797), read: "An act to authorize the sale by prescription of dimethyl sulfoxide (DMSO); amending section 50-31-311, MCA."

50-42-101. DMSO defined. As used in this part, "DMSO" means dimethyl sulfoxide.

History: **En. Sec. 2, Ch. 333, L. 1981.**

50-42-102. DMSO authorized. The manufacture, sale, possession, and distribution of DMSO are lawful within this state. However, distribution or sale of DMSO for human use must be by prescription in accordance with 50-31-307. A person who violates this section is subject to the penalties provided for in 50-31-506.

History: **En. Sec. 3, Ch. 333, L. 1981.**

50-42-103. Hospital not to interfere. A hospital or health care facility may not interfere with the physician-patient relationship by restricting or forbidding the use of DMSO when requested by a patient and prescribed or administered by a physician.

History: **En. Sec. 4, Ch. 333, L. 1981.**

50-42-104. Health care facility nonliability. No hospital, health care facility, pharmacy, or employee thereof shall be held liable for the administration of DMSO to any person at the direction of a physician licensed in Montana.

History: **En. Sec. 5, Ch. 333, L. 1981.**

50-42-105. Physician not subject to disciplinary action. A physician may not be subjected to disciplinary action by the board of medical examiners for prescribing or administering DMSO to a patient under his care as an adjunct to recognized, customary, or accepted modes of therapy in the treatment of any malignancy, disease, illness, or physical condition.

History: **En. Sec. 6, Ch. 333, L. 1981.**

50-42-106. DMSO not endorsed. This part is not an endorsement of DMSO for the treatment of any malignancy, disease, illness, or physical condition.

History: **En. Sec. 7, Ch. 333, L. 1981.**

50-42-107. DMSO optional. This part does not require:

(1) a physician, pharmacist, pharmacy, manufacturer, or distributor to manufacture, sell, or distribute DMSO; or

(2) a physician to prescribe DMSO for any patient.

History: **En. Sec. 8, Ch. 333, L. 1981.**

CHAPTERS 43 THROUGH 49

RESERVED

CHAPTER 50

FOOD ESTABLISHMENTS

Part 1 — General Provisions

Section
50-50-101. Purpose of regulation.
50-50-102. Definitions.
50-50-103. Department authorized to adopt rules.
50-50-104. Cooperative agreements authorized.
50-50-105. Diseased person not to handle food.
50-50-106. Injunctions.
50-50-107. County attorney to prosecute violations.
50-50-108. Violation of chapter a misdemeanor.

Part 2 — Licensing

50-50-201. License required.

50-50-202. Publicly owned establishment exempt from license requirement.
50-50-203. Application for license.
50-50-204. Right to license.
50-50-205. License fee.
50-50-206. License not transferable.
50-50-207. Expiration date of license.
50-50-208. Local board to report number of licensees to department.
50-50-209. Cancellation of license.
50-50-210. Submission of plan of correction as bar to cancellation.
50-50-211. Notice and hearing required.
50-50-212. Cancellation of license for multiple-type establishment.
50-50-213. Return of license for alteration or destruction.
50-50-214. Notification of and validation by local health officer.
50-50-215. Refusal by local health officer — appeal to board.

Part 3 — Inspections

50-50-301. Health officers to investigate and make inspections.
50-50-302. Health officers to have free access.
50-50-303. Licensee to furnish food samples.
50-50-304. Discovery of food capable of causing food-borne illness.
50-50-305. Department to pay local board for inspections.

Part 4 — Frozen Food Lockers

50-50-401. Tagging or declaration requirements for stored meat.
50-50-402. Plant owner not responsible for violation of game laws.
50-50-403. Liability of frozen food plant operators restricted.

Part 1

General Provisions

50-50-101. Purpose of regulation. Regulation of establishments defined in 50-50-102 is required to prevent and eliminate conditions and practices which endanger public health.

History: **En. Sec. 1, Ch. 17, L. 1967; R.C.M. 1947, 27-611.**

50-50-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

(2) "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

(3) "Establishment" means a food manufacturing establishment, meat market, food service establishment, frozen food plant, commercial food processor, or perishable food dealer.

(4) "Food" means an edible substance, beverage, or ingredient used, intended for use, or for sale for human consumption.

(5) "Food manufacturing establishment" means a commercial establishment and buildings or structures in connection with it used to manufacture or prepare food for sale or human consumption, but does not include milk producers' facilities, milk pasteurization facilities, milk product manufacturing plants, slaughterhouses, or meat packing plants.

(6) "Food service establishment" means a fixed or mobile restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grille, tearoom, sandwich shop, soda fountain, food store serving food or beverage samples, food or drink vending machine, tavern, bar, cocktail lounge, nightclub, industrial feeding establishment, catering kitchen, commissary, private organization routinely serving the public, or similar place where food or drink is prepared, served, or provided to the public with or without charge. The term does not include establishments, vendors, or vending machines which sell or serve only packaged nonperishable foods in their unbroken original containers or a private organization serving food only to its members.

(7) "Frozen food plant" means a place used to freeze, process, or store food including facilities used in conjunction with the frozen food plant and a place where individual compartments are offered to the public on a rental or other basis.

(8) "Meat market" means a commercial establishment and buildings or structures in connection with it used to process, store, or display meat or meat products for sale to the public or for human consumption.

(9) "Perishable food dealer" means a person or commercial establishment which is in the business of purchasing and selling perishable food to the public.

(10) "Person" means a person, partnership, corporation, association, cooperative group, or other entity engaged in operating, owning, or offering services of an establishment.

History: En. Sec. 2, Ch. 17, L. 1967; amd. Sec. 1, Ch. 130, L. 1971; amd. Sec. 1, Ch. 349, L. 1974; R.C.M. 1947, 27-612.

50-50-103. Department authorized to adopt rules. To protect public health, the department may adopt rules relating to the operation of establishments defined in 50-50-102, including coverage of food, personnel, food equipment and utensils, sanitary facilities and controls, construction and fixtures, and housekeeping.

History: En. Sec. 10, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-620(part).

50-50-104. Cooperative agreements authorized. The department may enter into cooperative agreements with other state agencies and political subdivisions of the state to carry out the provisions of this chapter.

History: En. Sec. 10, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-620(part).

50-50-105. Diseased person not to handle food. A person who has a communicable disease may not work in any establishment or in the handling or processing of food.

History: En. Sec. 9, Ch. 17, L. 1967; R.C.M. 1947, 27-619.

50-50-106. Injunctions. Notwithstanding any other provision of this chapter, the department, local, county, or district health officer or sanitarian may bring an action for an injunction against the continuation of an alleged violation of this chapter.

History: En. 27-615.2 by Sec. 3, Ch. 508, L. 1975; R.C.M. 1947, 27-615.2.

50-50-107. County attorney to prosecute violations. When the department furnishes evidence to the county attorney of a county in this state, the county attorney shall prosecute any person, firm, or corporation violating this chapter or a rule effective under this chapter.

History: En. Sec. 5, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; amd. Sec. 111, Ch. 349, L. 1974; amd. Sec. 2, Ch. 508, L. 1975; R.C.M. 1947, 27-615(5).

50-50-108. Violation of chapter a misdemeanor. A person who violates provisions of this chapter or rules adopted by the department under this chapter is guilty of a misdemeanor. Upon conviction, he shall be:

(1) fined not less than $50 or more than $100 for the first offense;

(2) fined not less than $75 or more than $200 for the second offense;

(3) fined not less than $200 and imprisoned in the county jail for not more than 90 days for the third and subsequent offenses.

History: En. Sec. 15, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-625.

Part 2

Licensing

50-50-201. License required. (1) A person operating an establishment shall procure an annual license from the department.

(2) A separate license is required for each establishment, but if more than one type of establishment is operated on the same premises and under the same management, only one license is required.

(3) Only one license is required for a person owning and operating one or more vending machines.

(4) Before a license may be issued by the department it must be validated by the local health officer, or if there is no local health officer the sanitarian, in the county where the establishment is located.

History: En. Sec. 3, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-613(1) thru (3); amd. Sec. 2, Ch. 200, L. 1979.

50-50-202. Publicly owned establishment exempt from license requirement. Establishments owned or operated by the state or a political subdivision of the state are exempt from licensure but must comply with the requirements of this chapter and rules adopted by the department under this chapter.

History: En. Sec. 3, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-613(6).

50-50-203. Application for license. An application for a license is made to the department on forms and contains information required by the department.

History: En. Sec. 4, Ch. 17, L. 1967; amd. Sec. 1, Ch. 48, L. 1973; amd. Sec. 1, Ch. 508, L. 1975; R.C.M. 1947, 27-614(1).

50-50-204. Right to license. Licenses shall be granted as a matter of right unless grounds for denial or cancellation exist.

History: En. Sec. 3, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-613(7).

50-50-205. License fee. For each license issued, the department shall collect a fee of $20. It shall deposit receipts in the state general fund.

History: En. Sec. 3, Ch. 17, L. 1967; amd. Sec. 1, Ch. 48, L. 1973; amd. Sec. 1, Ch. 508, L. 1975; R.C.M. 1947, 27-614(2).

50-50-206. License not transferable. Licenses are not transferable or applicable to any premises other than that for which the license was issued.

History: En. Sec. 3, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-613(5).

50-50-207. Expiration date of license. Licenses expire on December 31 following the date of issue unless canceled for cause.

History: En. Sec. 3, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-613(4).

50-50-208. Local board to report number of licensees to department. Before June 1 of each year, the local board of health shall submit to the department a list of the establishments in each jurisdiction that are licensed under this chapter.

History: En. Sec. 3, Ch. 17, L. 1967; amd. Sec. 1, Ch. 48, L. 1973; amd. Sec. 1, Ch. 508, L. 1975; R.C.M. 1947, 27-614(part).

50-50-209. Cancellation of license. The department may cancel a license if it finds, after proper investigation, that the licensee has violated this chapter or a rule effective under this chapter and the licensee has failed or refused to remedy or correct the violation.

History: En. Sec. 5, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; amd. Sec. 111, Ch. 349, L. 1974; amd. Sec. 2, Ch. 508, L. 1975; R.C.M. 1947, 27-615(part).

50-50-210. Submission of plan of correction as bar to cancellation. Submission to the department of an acceptable plan of correction within 10 days after receipt from the department of written notice of violation and execution of an acceptable plan within the time prescribed in the written notice of approval of the plan by the department shall be a bar to prosecution for violation.

History: En. Sec. 5, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; amd. Sec. 111, Ch. 349, L. 1974; amd. Sec. 2, Ch. 508, L. 1975; R.C.M. 1947, 27-615(part).

50-50-211. Notice and hearing required. A license may not be denied or canceled by the department without delivery to the applicant or licensee of a written statement of the grounds for cancellation or denial or the charge involved and an opportunity to answer at a hearing before the department to show cause, if any, why the license should not be denied or canceled. In such case, the licensee must make a written request to the department for a hearing within 10 days after notice of the grounds or charges has been received.

History: En. Sec. 5, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; amd. Sec. 111, Ch. 349, L. 1974; amd. Sec. 2, Ch. 508, L. 1975; R.C.M. 1947, 27-615(2).

50-50-212. Cancellation of license for multiple-type establishment. When a multiple-type establishment is licensed by the department, the denial or cancellation of the license may affect the entire establishment or only a portion of it as determined by the department. A multiple-type establishment includes an establishment authorized by 50-50-201(2).

History: En. Sec. 5, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; amd. Sec. 111, Ch. 349, L. 1974; amd. Sec. 2, Ch. 508, L. 1975; R.C.M. 1947, 27-615(3).

50-50-213. Return of license for alteration or destruction. On cancellation of a license or the right to operate one or more of the multiple-type establishments under the same license, the license certificate shall be returned to the department for destruction or deletion of types of establishment as the department may direct in its notice of cancellation.

History: En. Sec. 5, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; amd. Sec. 111, Ch. 349, L. 1974; amd. Sec. 2, Ch. 508, L. 1975; R.C.M. 1947, 27-615(4).

50-50-214. Notification of and validation by local health officer. (1) A license issued by the department under this chapter is not valid until signed by the local health officer in the county where the establishment is located.

(2) The local health officer shall, within 15 days after the department has notified the local health officer of its decision to issue a license under this chapter, make a final decision on whether the license will be validated.

(3) Failure of the local health officer to validate the license within 15 days after its receipt is a refusal.

History: En. Sec. 5, Ch. 200, L. 1979.

50-50-215. Refusal by local health officer — appeal to board. (1) The local health officer may only refuse to validate a license issued under this chapter, upon a finding that the requirements of this chapter and any rules implementing it are not satisfied. If the local health officer refuses to validate the license, he shall notify the applicant and the department in writing stating his reasons.

(2) The applicant or any person aggrieved by the decision of the local health officer not to validate a license may appeal the decision to the local board of health within 30 days after receiving written notice of the local health officer's decision.

(3) The hearing before the local board of health shall be held pursuant to the contested case provisions of the Montana Administrative Procedure Act.

History: En. Sec. 6, Ch. 200, L. 1979.

Part 3

Inspections

50-50-301. Health officers to investigate and make inspections. State and local health officers, sanitarians, or other authorized persons shall make investigations and inspections of establishments and make reports to the department as required by rules adopted by the department.

History: En. Sec. 11, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-621(1).

50-50-302. Health officers to have free access. State and local health officers, sanitarians, and other authorized persons shall have free access to establishments at all reasonable hours.

History: En. Sec. 11, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-621(2).

50-50-303. Licensee to furnish food samples. Persons licensed under part 2 shall furnish food samples for analysis as required by rules adopted by the department.

History: En. Sec. 11, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-621(3).

50-50-304. Discovery of food capable of causing food-borne illness. If a state or local health officer, sanitarian, or other authorized person finds food that is capable of causing food-borne illness, he shall issue a report in writing recommending that the food be withheld from sale to the public. A duplicate copy of the report, properly authenticated, is admissible in evidence in any action or proceeding where the condition of the food at the time of the inspection is material.

History: En. Sec. 11, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-621(4).

50-50-305. Department to pay local board for inspections. (1) Before June 30 of each year, the department shall pay to a local board of health, as established under 50-2-104, 50-2-106, or 50-2-107, an amount from any general fund appropriation to the department which is for the purpose of inspecting establishments licensed under this chapter; provided, however, that there is a functioning local board of health and that the local board of health, local health officers, and sanitarians assist in the enforcement of the provisions of this chapter and the rules adopted under it.

(2) The funds received by the local board of health shall be deposited with the appropriate local fiscal authority and shall be in addition to the funds appropriated under 50-2-108 through 50-2-114.

History: En. Sec. 3, Ch. 17, L. 1967; amd. Sec. 1, Ch. 48, L. 1973; amd. Sec. 1, Ch. 508, L. 1975; R.C.M. 1947, 27-614(part).

Part 4

Frozen Food Lockers

50-50-401. Tagging or declaration requirements for stored meat. (1) The owner or operator of an establishment, as defined in this chapter, shall not receive the carcass of a game animal, game bird, or any quarter, half, or whole carcass of beef or veal unless:

(a) it is properly stamped or tagged; or

(b) a written declaration is filed by the owner stating how it was obtained, date placed in the locker, and weight and type of meat.

(2) A declaration made under subsection (1)(b) of this section shall be retained for 1 year and shall be open to inspection by employees of the department.

History: En. Sec. 14, Ch. 17, L. 1967; R.C.M. 1947, 27-624(part).

50-50-402. Plant owner not responsible for violation of game laws. A person who owns or operates a frozen food plant which offers individual compartments to the public is not responsible for violation of game laws by persons who rent locker space from him.

History: En. Sec. 14, Ch. 17, L. 1967; R.C.M. 1947, 27-624(part).

50-50-403. Liability of frozen food plant operators restricted. The liability for loss of food by the owner or operator of a frozen food plant which offers individual compartments to the public is limited to negligence in operation or negligence of his employees.

History: En. Sec. 12, Ch. 17, L. 1967; R.C.M. 1947, 27-622.

CHAPTER 51

HOTELS, MOTELS, AND ROOMINGHOUSES

Part 1 — General Provisions

Section
50-51-101. Purpose of regulation.
50-51-102. Definitions.
50-51-103. Department authorized to adopt rules.
50-51-104. Cooperative agreements authorized.
50-51-105. County attorney to prosecute violations.
50-51-106. Violation of chapter a misdemeanor.
50-51-107. Provision of full-time nursing services prohibited.

Part 2 — Licensing

50-51-201. License required.
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Part 3 — Inspections

50-51-301. Health officers to investigate and make inspections.
50-51-302. Health officers to have free access.
50-51-303. Department to pay local board for inspections.

Part 1

General Provisions

50-51-101. Purpose of regulation. It is hereby found and declared that the public welfare requires control and regulation of the operation of establishments providing lodging space accommodations, as defined in 50-51-102 hereof, and the control, inspection, and regulation of persons engaged therein in order to prevent or eliminate unsanitary and unhealthful conditions and practices, which conditions and practices may endanger public health. It is further found and declared that the regulation of establishments providing lodging space accommodations as above outlined is in the interest of social well-being and the health and safety of the state and all of its people.

History: En. Sec. 1, Ch. 18, L. 1967; amd. Sec. 1, Ch. 485, L. 1973; R.C.M. 1947, 34-301.

50-51-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means board of health and environmental sciences.

(2) "Department" means the department of health and environmental sciences.

(3) "Hotel" or "motel" includes a building or structure kept, used, maintained as, advertised as, or held out to the public to be a hotel, motel, inn, motor court, tourist court, public lodging house, or place where sleeping accommodations are furnished for a fee to transient guests, with or without meals.

(4) "Person" includes an individual, partnership, corporation, association, county, municipality, cooperative group, or other entity engaged in the business of operating, owning, or offering the services of a hotel, motel, tourist home, retirement home, or roominghouse.

(5) "Roominghouse" or "retirement home" means buildings in which separate sleeping rooms are rented providing sleeping accommodations for three or more persons on a weekly, semimonthly, monthly, or permanent basis, whether or not meals or central kitchens are provided but without separated cooking facilities or kitchens within each room, and whose occupants do not need professional nursing services on a full-time basis.

(6) "Tourist home" means an establishment or premises where sleeping accommodations are furnished to transient guests for hire or rent on a daily or weekly rental basis in a private home when the accommodations are offered for hire or rent for the use of the traveling public.

(7) "Transient guest" means a guest for only a brief stay, such as the traveling public.

History: En. Sec. 2, Ch. 18, L. 1967; amd. Sec. 2, Ch. 485, L. 1973; amd. Sec. 1, Ch. 325, L. 1977; R.C.M. 1947, 34-302.

50-51-103. Department authorized to adopt rules. The department may adopt and enforce rules to preserve the public health and safety. These rules shall relate to construction, furnishings, housekeeping, personnel, sanitary facilities and controls, water supply, sewerage and sewage disposal system, refuse collection and disposal, registration and supervision, and fire and life safety code.

History: En. Sec. 6, Ch. 18, L. 1967; amd. Sec. 5, Ch. 485, L. 1973; R.C.M. 1947, 34-306(a).

50-51-104. Cooperative agreements authorized. The department is hereby authorized to enter into cooperative agreements with any of the state agencies or political subdivisions for the purpose of carrying out the provisions of this chapter or any part thereof.

History: En. Sec. 6, Ch. 18, L. 1967; amd. Sec. 5, Ch. 485, L. 1973; R.C.M. 1947, 34-306(b).

50-51-105. County attorney to prosecute violations. When the department furnishes evidence to the county attorney of a county in this state, the county attorney shall prosecute any person, firm, or corporation violating this chapter or a rule effective under this chapter.

History: En. Sec. 5, Ch. 18, L. 1967; amd. Sec. 7, Ch. 349, L. 1974; amd. Sec. 2, Ch. 505, L. 1975; R.C.M. 1947, 34-305(5).

50-51-106. Violation of chapter a misdemeanor. Any person violating any provision of this chapter or regulation made hereunder, except 50-51-107, is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $50 or more than $100 for the first offense and not less than $75 or more than $200 for the second offense and for the third and subsequent offenses not less than $200 and by imprisonment in the county jail not to exceed 90 days.

History: **En. Sec. 9, Ch. 18, L. 1967; R.C.M. 1947, 34-309; amd. Sec. 18, Ch. 37, L. 1979.**

50-51-107. Provision of full-time nursing services prohibited. (1) Hotels, motels, boardinghouses, roominghouses, or similar accommodations may not provide professional nursing services to residents on a full-time basis.

(2) Whenever a complaint is filed with the department that a person in need of professional nursing services is residing in a roominghouse or other similar accommodation not licensed to provide such service, the department shall investigate and provide for appropriate placement of such person if it is found that professional nursing services are needed.

History: **En. 34-311, 34-312 by Secs. 2, 3, Ch. 325, L. 1977; R.C.M. 1947, 34-311, 34-312.**

Part 2

Licensing

50-51-201. License required. (1) Each year, every person engaged in the business of conducting or operating a hotel, motel, tourist home, retirement home, or roominghouse shall procure a license issued by the department.

(2) A separate license is required for each establishment; however, where more than one of each type of establishment is operated on the same premises and under the same management, only one license is required which shall enumerate on the certificate thereof the types of establishments licensed.

(3) Before a license may be issued by the department it must be validated by the local health officer, or if there is no local health officer the sanitarian, in the county where the establishment is located.

History: **En. Sec. 3, Ch. 18, L. 1967; amd. Sec. 3, Ch. 485, L. 1973; R.C.M. 1947, 34-303(part); amd. Sec. 3, Ch. 200, L. 1979.**

50-51-202. Application for license. Application for a license shall be made in writing to the department on such forms and with such pertinent information as it considers necessary.

History: **En. Sec. 3, Ch. 18, L. 1967; amd. Sec. 3, Ch. 485, L. 1973; R.C.M. 1947, 34-303(part); amd. Sec. 19, Ch. 37, L. 1979.**

50-51-203. Right to renewal. (1) Existing licenses shall be renewed as a matter of right, unless conditions exist which are grounds for a cancellation or denial of a license.

(2) Renewal may be obtained annually by paying the required annual license fee.

History: **(1)En. Sec. 3, Ch. 18, L. 1967; amd. Sec. 3, Ch. 485, L. 1973; Sec. 34-303, R.C.M. 1947; (2)En. Sec. 4, Ch. 18, L. 1967; amd. Sec. 4, Ch. 485, L. 1973; amd. Sec. 1, Ch. 505, L. 1975; Sec. 34-304, R.C.M. 1947; R.C.M. 1947, 34-303(part), 34-304(part).**

50-51-204. License fee. There shall be paid to the department with each application for such license or for renewal of such license an annual license fee of $20. These fees shall be deposited with the state treasury to the credit of the general fund.

History: En. Sec. 4, Ch. 18, L. 1967; amd. Sec. 4, Ch. 485, L. 1973; amd. Sec. 1, Ch. 505, L. 1975; R.C.M. 1947, 34-304(a).

50-51-205. License fee to supersede other fees. Payment of the license fee stipulated herein shall be accepted in lieu of any and all existing state fees and charges for like purposes or intent which may be existent prior to the adoption of this chapter.

History: En. Sec. 10, Ch. 18, L. 1967; R.C.M. 1947, 34-310.

50-51-206. License not transferable. Such license shall not be transferable or be applicable to any premises other than that for which originally issued.

History: En. Sec. 4, Ch. 18, L. 1967; amd. Sec. 4, Ch. 485, L. 1973; amd. Sec. 1, Ch. 505, L. 1975; R.C.M. 1947, 34-304(part).

50-51-207. Expiration date of license. Each license shall expire on December 31 following its date of issue unless canceled for cause.

History: En. Sec. 4, Ch. 18, L. 1967; amd. Sec. 4, Ch. 485, L. 1973; amd. Sec. 1, Ch. 505, L. 1975; R.C.M. 1947, 34-304(part).

50-51-208. Local board to report number of licensees to department. Before June 1 of each year, the local board of health shall submit to the department a list of the establishments in each jurisdiction that are licensed pursuant to this part.

History: En. Sec. 4, Ch. 18, L. 1967; amd. Sec. 4, Ch. 485, L. 1973; amd. Sec. 1, Ch. 505, L. 1975; R.C.M. 1947, 34-304(part).

50-51-209. Cancellation of license. The department may cancel a license if it finds, after proper investigation, that the licensee has violated this chapter or a rule effective under this chapter and the licensee has failed or refused to remedy or correct the violation.

History: En. Sec. 5, Ch. 18, L. 1967; amd. Sec. 7, Ch. 349, L. 1974; amd. Sec. 2, Ch. 505, L. 1975; R.C.M. 1947, 34-305(part).

50-51-210. Submission of plan of correction as bar to cancellation. Submission to the department of an acceptable plan of correction within 10 days after receipt from the department of written notice of violation and execution of an acceptable plan within the time prescribed in the written notice of approval of the plan by the department shall be a bar to prosecution for violation.

History: En. Sec. 5, Ch. 18, L. 1967; amd. Sec. 7, Ch. 349, L. 1974; amd. Sec. 2, Ch. 505, L. 1975; R.C.M. 1947, 34-305(part).

50-51-211. Notice and hearing required. A license may not be denied or canceled by the department without delivery to the applicant or licensee of a written statement of the grounds therefor or the charge involved and an opportunity to answer at a hearing before the department to show cause, if any, why the license should not be denied or canceled. In such case, the licensee must make a written request to the board for a hearing within 10 days after notice of the grounds or charges has been received.

History: En. Sec. 5, Ch. 18, L. 1967; amd. Sec. 7, Ch. 349, L. 1974; amd. Sec. 2, Ch. 505, L. 1975; R.C.M. 1947, 34-305(2).

50-51-212. Cancellation of license for multiple-type establishment. When a multiple-type establishment is licensed by the department, the denial or cancellation of the license may affect the entire establishment or only a portion of it as determined by the department (a multiple-type establishment includes two or more of the following: hotel, motel, or tourist home).

History: En. Sec. 5, Ch. 18, L. 1967; amd. Sec. 7, Ch. 349, L. 1974; amd. Sec. 2, Ch. 505, L. 1975; R.C.M. 1947, 34-305(3).

50-51-213. Return of license for alteration or destruction. On cancellation of a license or the right to operate one or more of the multiple-type establishments under the same license, the license certificate shall be returned to the department for destruction or deletion of types of establishment as the department may direct in its notice of cancellation.

History: En. Sec. 5, Ch. 18, L. 1967; amd. Sec. 7, Ch. 349, L. 1974; amd. Sec. 2, Ch. 505, L. 1975; R.C.M. 1947, 34-305(4).

50-51-214. Notification of and validation by local health officer. (1) A license issued by the department under this chapter is not valid until signed by the local health officer in the county where the establishment is located.

(2) The local health officer shall, within 15 days after the department has notified the local health officer of its decision to issue a license under this chapter, make a final decision on whether the license will be validated.

(3) Failure of the local health officer to validate the license within 15 days after its receipt is a refusal.

History: En. Sec. 5, Ch. 200, L. 1979.

50-51-215. Refusal by local health officer — appeal to board. (1) The local health officer may only refuse to validate a license issued under this chapter, upon a finding that the requirements of this chapter and any rules implementing it are not satisfied. If the local health officer refuses to validate the license, he shall notify the applicant and the department in writing stating his reasons.

(2) The applicant or any person aggrieved by the decision of the local health officer not to validate a license may appeal the decision to the local board of health within 30 days after receiving written notice of the local health officer's decision.

(3) The hearing before the local board of health shall be held pursuant to the contested case provisions of the Montana Administrative Procedure Act.

History: En. Sec. 6, Ch. 200, L. 1979.

Part 3

Inspections

50-51-301. Health officers to investigate and make inspections. (1) The department, through its employees and through local, county, and district health officers, sanitarians, or other authorized representatives, shall make all necessary investigations and inspections for enforcement of this chapter.

(2) Each local, county, or district health officer, sanitarian, or other authorized representative shall make regular inspections as the rules of the department may direct and such special inspections as the department may from time to time direct, and he shall make such reports relative to conditions existing within his district at such times and in such manner as the department may direct.

History: En. Sec. 7, Ch. 18, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 34-307(a).

50-51-302. Health officers to have free access. All persons authorized by this chapter or by regulations adopted under this chapter shall have free access at all reasonable hours to any of the establishments listed and defined in 50-51-102 for the purpose of making inspections.

History: En. Sec. 7, Ch. 18, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 34-307(b).

50-51-303. Department to pay local board for inspections. (1) Before June 30 of each year, the department shall pay to a local board of health, as established under 50-2-104, 50-2-106, or 50-2-107, an amount from any general fund appropriation to the department which is for the purpose of inspecting establishments licensed under this chapter; provided, however, that there is a functioning local board of health and the local board of health, local health officers, and sanitarians assist in the enforcement of the provisions of this chapter and the rules adopted under it.

(2) The funds received by the local board of health shall be deposited with the appropriate local fiscal authority and shall be in addition to the funds appropriated under 50-2-108 through 50-2-114.

History: En. Sec. 4, Ch. 18, L. 1967; amd. Sec. 4, Ch. 485, L. 1973; amd. Sec. 1, Ch. 505, L. 1975; R.C.M. 1947, 34-304(part).

CHAPTER 52

TOURIST CAMPGROUNDS AND TRAILER COURTS

Part 1 — General Provisions

Section
50-52-101. Definitions.
50-52-102. Department to adopt rules.
50-52-103. Duty to obtain license and permit inspections.
50-52-104. County attorney to prosecute violations.
50-52-105. Violation of chapter a misdemeanor.

Part 2 — Licensing

50-52-201. Application for license.
50-52-202. License fee.
50-52-203. Expiration date of license.
50-52-204. Local board to report number of licensees to department.
50-52-205. Cancellation of license.
50-52-206. Submission of plan of correction as bar to cancellation.
50-52-207. Notice and hearing required.
50-52-208. Notification of and validation by local health officer.
50-52-209. Refusal by local health officer — appeal to board.

Part 3 — Inspections

50-52-301. Health officers to make inspections.
50-52-302. Department to pay local board for inspection.

Part 1

General Provisions

50-52-101. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Board" means the board of health and environmental sciences.

(2) "Department" means the department of health and environmental sciences.

(3) "Person" includes an individual, partnership, corporation, association, or other entity engaged in the business of operating or owning or offering the services of a tourist campground or trailer court.

(4) "Tourist campground" means a place used for public camping primarily by automobile tourists where persons can camp or secure tents or park individual trailers or truck trailers for camping and sleeping purposes.

(5) "Trailer court" means a parcel of land offered to the public and usually designated a trailer court, trailer park, or mobile home park upon which two or more spaces are occupied or intended for occupancy by trailers or mobile homes for nonrecreational dwelling purposes.

History: En. Sec. 212, Ch. 197, L. 1967; amd. Sec. 1, Ch. 383, L. 1973; R.C.M. 1947, 69-5601.

50-52-102. Department to adopt rules. The department shall adopt rules for constructing and operating tourist campgrounds and trailer courts to insure sanitation and protect public health.

History: En. Sec. 213, Ch. 197, L. 1967; amd. Sec. 2, Ch. 383, L. 1973; amd. Sec. 13, Ch. 140, L. 1977; R.C.M. 1947, 69-5602.

50-52-103. Duty to obtain license and permit inspections. A person operating a tourist campground or trailer court shall:

(1) obtain a license from the department;

(2) permit inspections by state or local health officers, sanitarians, or other authorized persons at all reasonable times.

History: En. Sec. 214, Ch. 197, L. 1967; amd. Sec. 3, Ch. 383, L. 1973; amd. Sec. 14, Ch. 140, L. 1977; R.C.M. 1947, 69-5603.

50-52-104. County attorney to prosecute violations. When the department furnishes evidence to the county attorney of a county in this state, the county attorney shall prosecute any person, firm, or corporation violating this chapter or a rule effective under this chapter.

History: En. Sec. 217, Ch. 197, L. 1967; amd. Sec. 81, Ch. 349, L. 1974; amd. Sec. 2, Ch. 506, L. 1975; R.C.M. 1947, 69-5606(3).

50-52-105. Violation of chapter a misdemeanor. (1) A person violating a provision of this chapter or a rule made under it shall be guilty of a misdemeanor and upon conviction shall be fined not less than $50 or more than $100 for the first offense and not less than $75 or more than $200 for the second offense, and for the third and subsequent offenses, he shall be punished by a fine of not less than $200 and imprisonment in the county jail not to exceed 90 days.

(2) Fines shall be paid to the county treasurer of the county in which the tourist campground or trailer court is located. The county treasurer shall send all fines collected to the state treasurer for deposit in the state general fund.

History: En. Sec. 218, Ch. 197, L. 1967; amd. Sec. 6, Ch. 383, L. 1973; amd. Sec. 3, Ch. 506, L. 1975; amd. Sec. 15, Ch. 140, L. 1977; R.C.M. 1947, 69-5607.

Part 2

Licensing

50-52-201. Application for license. (1) Application for a license is made to the department on forms containing information required by the department.

(2) The department may not issue a license unless it has been validated by the local health officer, or if there is no local health officer the sanitarian, in the county where the establishment is located.

History: En. Sec. 215, Ch. 197, L. 1967; amd. Sec. 4, Ch. 383, L. 1973; amd. Sec. 1, Ch. 506, L. 1975; R.C.M. 1947, 69-5604(part); amd. Sec. 4, Ch. 200, L. 1979.

50-52-202. License fee. (1) Each application shall be accompanied by a fee of $20.

(2) Fees collected by the department shall be deposited in the state general fund.

History: En. Sec. 215, Ch. 197, L. 1967; amd. Sec. 4, Ch. 383, L. 1973; amd. Sec. 1, Ch. 506, L. 1975; R.C.M. 1947, 69-5604(part).

50-52-203. Expiration date of license. Licenses expire on December 31 of the year in which they are issued.

History: En. Sec. 215, Ch. 197, L. 1967; amd. Sec. 4, Ch. 383, L. 1973; amd. Sec. 1, Ch. 506, L. 1975; R.C.M. 1947, 69-5604(part).

50-52-204. Local board to report number of licensees to department. Before June 1 of each year, the local board of health shall submit to the department a list of the establishments in each jurisdiction which are licensed under this part.

History: En. Sec. 215, Ch. 197, L. 1967; amd. Sec. 4, Ch. 383, L. 1973; amd. Sec. 1, Ch. 506, L. 1975; R.C.M. 1947, 69-5604(part).

50-52-205. Cancellation of license. The department may cancel a license if it finds, after proper investigation, that the licensee has violated this chapter or a rule effective under this chapter and the licensee has failed or refused to remedy or correct the violation.

History: En. Sec. 217, Ch. 197, L. 1967; amd. Sec. 81, Ch. 349, L. 1974; amd. Sec. 2, Ch. 506, L. 1975; R.C.M. 1947, 69-5606(part).

50-52-206. Submission of plan of correction as bar to cancellation. Submission to the department of an acceptable plan of correction within 10 days after receipt from the department of written notice of violation and execution of an acceptable plan within the time prescribed in the written notice of approval of the plan by the department shall be a bar to prosecution for violation.

History: En. Sec. 217, Ch. 197, L. 1967; amd. Sec. 81, Ch. 349, L. 1974; amd. Sec. 2, Ch. 506, L. 1975; R.C.M. 1947, 69-5606(part).

50-52-207. Notice and hearing required. A license may not be denied or canceled by the department without delivery to the applicant or licensee of a written statement of the grounds for denial or cancellation or the charge involved and an opportunity to answer at a hearing before the department to show cause, if any, why the license should not be denied or canceled. In this case, the licensee must make a written request to the department for a hearing within 10 days after notice of the grounds or charges has been received.

History: En. Sec. 217, Ch. 197, L. 1967; amd. Sec. 81, Ch. 349, L. 1974; amd. Sec. 2, Ch. 506, L. 1975; R.C.M. 1947, 69-5606(2).

50-52-208. Notification of and validation by local health officer. (1) A license issued by the department under this chapter is not valid until signed by the local health officer in the county where the establishment is located.

(2) The local health officer shall, within 15 days after the department has notified the local health officer of its decision to issue a license under this chapter, make a final decision on whether the license will be validated.

(3) Failure of the local health officer to validate the license within 15 days after its receipt is a refusal.

History: En. Sec. 5, Ch. 200, L. 1979.

50-52-209. Refusal by local health officer — appeal to board. (1) The local health officer may only refuse to validate a license issued under this chapter, upon a finding that the requirements of this chapter and any rules implementing it are not satisfied. If the local health officer refuses to validate the license, he shall notify the applicant and the department in writing stating his reasons.

(2) The applicant or any person aggrieved by the decision of the local health officer not to validate a license may appeal the decision to the local board of health within 30 days after receiving written notice of the local health officer's decision.

(3) The hearing before the local board of health shall be held pursuant to the contested case provisions of the Montana Administrative Procedure Act.

History: En. Sec. 6, Ch. 200, L. 1979.

Part 3

Inspections

50-52-301. Health officers to make inspections. The department or local health officer or sanitarian shall:

(1) inspect tourist campgrounds and trailer courts during reasonable hours as necessary;

(2) supervise the inspection of tourist campgrounds or trailer courts by local health officers, sanitarians, or other authorized persons as necessary.

History: En. Sec. 216, Ch. 197, L. 1967; amd. Sec. 5, Ch. 383, L. 1973; R.C.M. 1947, 69-5605.

50-52-302. Department to pay local board for inspection. (1) Before June 30 of each year, the department shall pay to a local board of health, as established under 50-2-104, 50-2-106, or 50-2-107, an amount from any general fund appropriation to the department which is for the purpose of inspecting establishments licensed under this chapter; provided, however, that there is a functioning local board of health and that the local board of health, local health officers, and sanitarians assist in the enforcement of the provisions of this chapter and the rules adopted under it.

(2) The funds received by the local board of health shall be deposited with the appropriate local fiscal authority and shall be in addition to the funds appropriated under 50-2-108 through 50-2-114.

History: En. Sec. 215, Ch. 197, L. 1967; amd. Sec. 4, Ch. 383, L. 1973; amd. Sec. 1, Ch. 506, L. 1975; R.C.M. 1947, 69-5604(part).

CHAPTER 53

PUBLIC SWIMMING POOLS AND SWIMMING AREAS

Part 1 — General Provisions

Section

50-53-101. Purpose of regulation.
50-53-102. Definitions.
50-53-103. Duties of department.
50-53-104. Powers of health officers.
50-53-105. Publication of inspection reports.
50-53-106. Duties of pool operators.
50-53-107. Pool operation to be sanitary, healthful, and safe.
50-53-108. Unauthorized construction or operation a public nuisance.
50-53-109. Violation of chapter a misdemeanor.

Part 1

General Provisions

50-53-101. Purpose of regulation. It is the public policy of this state to regulate public swimming pools and public bathing places to protect public health.

History: En. Sec. 201, Ch. 197, L. 1967; R.C.M. 1947, 69-5501.

50-53-102. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

(2) "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

(3) "Person" means a person, firm, partnership, corporation, organization, the state, or any political subdivision of the state.

(4) "Public bathing place" means a body of water with bathhouses and related appurtenances operated for the public.

(5) "Public swimming pool" means an artificial pool and bathhouses and related appurtenances for swimming, bathing, or wading, including natural hot water pools. The term does not include:

(a) swimming pools located on private property used for swimming or bathing only by the owner, members of his family, or their invited guests; or

(b) medicinal hot water baths for individual use.

History: **Ap. p. Sec. 202, Ch. 197, L. 1967; amd. Sec. 24, Ch. 187, L. 1977; Sec. 69-5502, R.C.M. 1947; (1), (2)En. Sec. 2, Ch. 197, L. 1967; amd. Sec. 28, Ch. 349, L. 1974; Sec. 69-4102, R.C.M. 1947; R.C.M. 1947, 69-4102(1), (2), 69-5502.**

50-53-103. Duties of department. (1) The department shall adopt rules for sanitation in public swimming pools and public bathing places to protect public health.

(2) The department shall supervise the sanitation of public swimming pools and public bathing places.

History: **En. Secs. 203, 204, Ch. 197, L. 1967; amd. Secs. 104, 109, Ch. 349, L. 1974; R.C.M. 1947, 69-5503, 69-5504.**

50-53-104. Powers of health officers. Authorized employees of the department and local boards of health may:

(1) at reasonable times inspect public swimming pools and public bathing places to determine if provisions of this chapter and rules of the department are being violated;

(2) request an injunction from the district court to enjoin actions in violation of this chapter or rules adopted by the department;

(3) bring actions to abate nuisances maintained in violation of this chapter in the manner provided by law for the summary abatement of other public nuisances;

(4) enforce rules adopted by the department.

History: **En. Sec. 205, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5505.**

50-53-105. Publication of inspection reports. The department may publish reports of inspections authorized by 50-53-104(1).

History: **En. Sec. 206, Ch. 197, L. 1967; R.C.M. 1947, 69-5506.**

50-53-106. Duties of pool operators. Each person operating a public swimming pool or public bathing place shall:

(1) operate the pool or public bathing place in a sanitary and safe manner;

(2) keep records of public health and safety information required by the department;

(3) furnish information to the department on forms prescribed by it.

History: **En. Sec. 208, Ch. 197, L. 1967; R.C.M. 1947, 69-5508.**

50-53-107. Pool operation to be sanitary, healthful, and safe. Public swimming pools and public bathing places, including pool structures, methods of operation, source of water supply, methods of water purification, lifesaving apparatus, safety measures for bathers, and personal cleanliness measures for bathers, shall be sanitary, healthful, and safe.

History: En. Sec. 209, Ch. 197, L. 1967; R.C.M. 1947, 69-5509.

50-53-108. Unauthorized construction or operation a public nuisance. The construction or operation of a public swimming pool or public bathing place contrary to the provisions of this chapter or rules adopted by the department under the provisions of this chapter is a public nuisance and dangerous to public health.

History: En. Sec. 210, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5510.

50-53-109. Violation of chapter a misdemeanor. A person who violates this chapter or rules adopted by the department under the provisions of this chapter is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $25 or more than $500, imprisonment for not more than 6 months, or both. Each day that a violation continues is a separate violation.

History: En. Sec. 211, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5511.

CHAPTERS 54 THROUGH 59

RESERVED

CHAPTER 60

BUILDING CONSTRUCTION STANDARDS

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Part 1

General Provisions

50-60-101. Definitions. As used in parts 1 through 4 and part 7 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Building" means a combination of any materials, whether mobile, portable, or fixed, to form a structure and the related facilities for the use or occupancy by persons or property. The word "building" shall be construed as though followed by the words "or part or parts thereof".

(2) "Building regulations" means any law, rule, resolution, regulation, ordinance, or code, general or special, or compilation thereof enacted or

adopted by the state or any municipality, including departments, boards, bureaus, commissions, or other agencies of the state or a municipality relating to the design, construction, reconstruction, alteration, conversion, repair, inspection, or use of buildings and installation of equipment in buildings. The term does not include zoning ordinances.

(3) "Construction" means the original construction and equipment of buildings and requirements or standards relating to or affecting materials used, including provisions for safety and sanitary conditions.

(4) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

(5) "Equipment" means plumbing, heating, electrical, ventilating, air conditioning, and refrigerating equipment, elevators, dumbwaiters, escalators, and other mechanical additions or installations.

(6) "Local building department" means the agency or agencies of any municipality charged with the administration, supervision, or enforcement of building regulations, approval of plans, inspection of buildings, or the issuance of permits, licenses, certificates, and similar documents prescribed or required by state or local building regulations.

(7) "Local legislative body" means the council or commission charged with governing the municipality.

(8) "Municipality" means any incorporated city or town and its jurisdictional area as defined by subsection (9) of this section.

(9) (a) "Municipal jurisdictional area" means the area within the limits of an incorporated municipality unless the area is extended at the written request of a municipality.

(b) Upon request, the council may approve extension of the jurisdictional area to include:

(i) all or part of the area within 4 ½ miles of the corporate limits of a municipality;

(ii) all of any platted subdivision which is partially within 4 ½ miles of the corporate limits of a municipality; and

(iii) all of any zoning district adopted pursuant to Title 76, chapter 2, part 1 or 2, which is partially within 4 ½ miles of the corporate limits of a municipality.

(c) Distances shall be measured in a straight line in a horizontal plane.

(10) "Owner" means the owner or owners of the premises or lesser estate, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a building.

(11) "Recreational vehicle" means anything defined as a recreational vehicle in the edition of NFPA No. 501C or ANSI A119.2 most recently adopted by the state in accordance with 50-60-401.

(12) "State agency" means any state officer, department, board, bureau, commission, or other agency of this state.

(13) "State building code" means the state building code provided for in 50-60-203 or any portion of the code of limited application and any of its modifications or amendments.

History: En. Sec. 2, Ch. 366, L. 1969; amd. Sec. 1, Ch. 226, L. 1974; amd. Sec. 1, Ch. 244, L. 1975; amd. Sec. 1, Ch. 459, L. 1975; amd. Sec. 1, Ch. 504, L. 1977; R.C.M. 1947, 69-2105; amd. Sec. 1, Ch. 315, L. 1979; amd. Sec. 1, Ch. 555, L. 1981.

Compiler's Comments

1981 Amendment: Deleted former subsection (11), defining public place.

Effective Date: Section 3, Ch. 555, L. 1981, provided: "This act is effective on passage and approval." Approved April 28, 1981.

50-60-102. Applicability. (1) The state building codes do not apply to residential buildings containing less than five dwelling units or their attached-to structures, any farm or ranch building, and any private garage or private storage structure used only for the owner's own use, located within the municipality's or county's jurisdictional area, unless the local legislative body or board of county commissioners by ordinance or resolution makes the state building code applicable to these structures. The state may not enforce the state building code under 50-60-205 for the aforementioned buildings. Local governments that have made the state building codes applicable to the aforementioned buildings may enforce within their jurisdictional areas the state building code as adopted by the respective local government. The state may not enforce the state building code under 50-60-205 for those buildings.

(2) Where good and sufficient cause exists, a written request for limitation of the state building code may be filed with the department for filing as a permanent record.

(3) The department may limit the application of any rule or portion of the state building code to include or exclude:

(a) specified classes or types of buildings according to use or other distinctions as may make differentiation or separate classification or regulation necessary, proper, or desirable;

(b) specified areas of the state based upon size, population density, special conditions prevailing therein, or other factors which make differentiation or separate classification or regulation necessary, proper, or desirable.

History: En. Sec. 4, Ch. 366, L. 1969; amd. Sec. 2, Ch. 226, L. 1974; R.C.M. 1947, 69-2107; amd. Sec. 2, Ch. 555, L. 1981.

Compiler's Comments

1981 Amendment: Deleted former subsection (1), providing: "Outside municipalities and their jurisdictional area, as defined by 50-60-101(9), parts 1 through 4 apply to "public places", as defined in 50-60-101(11)"; inserted new language in (1).

Effective Date: Section 3, Ch. 555, L. 1981, provided: "This act is effective on passage and approval." Approved April 28, 1981.

50-60-103. Administration by department. The department shall administer parts 1 through 4 and for that purpose shall:

(1) issue orders necessary to effectuate the purposes of parts 1 through 4 and enforce the orders by all appropriate administrative and judicial proceedings;

(2) enter, inspect, and examine buildings or premises necessary for the proper performance of its duties under parts 1 through 4;

(3) study the operation of the state building code, local building regulations, and other laws related to the construction of buildings to ascertain their effects upon the cost of building construction and the effectiveness of their provisions for health and safety;

(4) recommend tests or require the testing and approval of materials, devices, and methods of construction to ascertain their acceptability under the requirements of the state building code and issue certification of such acceptability;

(5) appoint experts, consultants, and technical advisers for assistance and recommendations relative to the formulation and adoption of the state building code;

(6) advise, consult, and cooperate with other agencies of the state, local governments, industries, and interested persons or groups.

History: En. Sec. 6, Ch. 366, L. 1969; amd. Sec. 3, Ch. 226, L. 1974; R.C.M. 1947, 69-2109.

50-60-104. Inspection fees. The department shall establish a schedule of fees and may collect fees for the inspection of plans and specifications and for the inspection of buildings, factory-built buildings, recreational vehicles, tramways, or any other facility or structure.

History: **En. Sec. 4, Ch. 348, L. 1971; amd. Sec. 11, Ch. 226, L. 1974; amd. Sec. 4, Ch. 504, L. 1977; R.C.M. 1947, 69-2124(part).**

50-60-105. Hearings authorized. The department may hold hearings relating to the administration of parts 1 through 4 in accordance with the Montana Administrative Procedure Act.

History: **En. Sec. 8, Ch. 366, L. 1969; amd. Sec. 5, Ch. 226, L. 1974; amd. Sec. 2, Ch. 116, L. 1975; amd. Sec. 17, Ch. 504, L. 1975; amd. Sec. 1, Ch. 173, L. 1977; amd. Sec. 16, Ch. 187, L. 1977; amd. Sec. 2, Ch. 504, L. 1977; R.C.M. 1947, 69-2111(2).**

50-60-106. Powers and duties of municipalities. (1) The examination, approval, or disapproval of plans and specifications, the issuance and revocation of building permits, licenses, certificates, and similar documents, the inspection of buildings, and the administration and enforcement of building regulations within the municipal jurisdictional area shall be the responsibility of the municipalities of the state.

(2) Each municipality may:

(a) examine, approve, or disapprove plans and specifications for the construction of any building, the construction of which is pursuant or purports to be pursuant to the provisions of the state or municipal building code, and direct the inspection of the buildings during and in the course of construction;

(b) require that construction of buildings be in accordance with the applicable provisions of the state or municipal building code, subject to the powers of variance or modification granted to the department;

(c) order in writing the remedying of any condition found to exist in, on, or about any building in violation of the state or municipal building code; orders may be served upon the owner or his authorized agent personally or by sending by registered or certified mail a copy of the order to the owner or his authorized agent at the address set forth in the application for permission for the construction of the building; any local building department, by action of an authorized officer, may grant in writing such time as may be reasonably necessary for achieving compliance with the order;

(d) issue certificates of occupancy, permits, licenses, and such other documents in connection with the construction of the buildings as required;

(e) make, amend, and repeal rules for the administration and enforcement of the provisions of this section and for the collection of reasonable fees, which shall be comparable to fees imposed or prescribed by existing local building regulations;

(f) prohibit the commencement of construction until a permit has been issued by the local building department after a showing of compliance with the requirements of the applicable provisions of the state or municipal building code.

History: **En. Sec. 14, Ch. 366, L. 1969; amd. Sec. 11, Ch. 226, L. 1974; R.C.M. 1947, 69-2117(part).**

50-60-107. Certificate of occupancy. (1) A certificate of occupancy for a building constructed in accordance with the provisions of the state or municipal building code shall certify that the building conforms to the requirements of the building regulations applicable to it.

(2) Every certificate of occupancy, unless and until set aside or vacated by a court of competent jurisdiction, is binding and conclusive upon all municipal agencies as to all matters set forth, and no order, directive, or requirement at variance therewith may be made or issued by any other state or municipal agency.

History: **En. Sec. 14, Ch. 366, L. 1969; amd. Sec. 11, Ch. 226, L. 1974; R.C.M. 1947, 69-2117(part).**

50-60-108. Construction permit required. Any person who desires to construct a building which is subject to the provisions of parts 1 through 4 must apply for a permit from the appropriate authorities.

History: **En. Sec. 10, Ch. 366, L. 1969; amd. Sec. 6, Ch. 226, L. 1974; R.C.M. 1947, 69-2113.**

50-60-109. Injunctions authorized. (1) The construction or use of the building in violation of any provision of the state or municipal building code or any lawful order of a state building official or a local building department may be enjoined by a judge of the district court in the judicial district in which the building is located.

(2) This section will be governed by the Montana Rules of Civil Procedure.

History: **En. Sec. 15, Ch. 366, L. 1969; R.C.M. 1947, 69-2118.**

50-60-110. Violation a misdemeanor. Any person served with an order pursuant to the provisions of parts 1 through 4 who fails to comply with the order not later than 30 days after service or within the time fixed by the department or a local building department for compliance, whichever is the greater, or any owner, builder, architect, tenant, contractor, subcontractor, construction superintendent, their agents, or any person taking part or assisting in the construction or use of any building who knowingly violates any of the applicable provisions of the state building code or a municipal building code is guilty of a misdemeanor.

History: **En. Sec. 16, Ch. 366, L. 1969; amd. Sec. 8, Ch. 226, L. 1974; R.C.M. 1947, 69-2119.**

Part 2

State Building Code

50-60-201. Purpose of state building code. The state building code shall be designed to effectuate the general purposes of parts 1 through 4 and the following specific objectives and standards to:

(1) provide reasonably uniform standards and requirements for construction and construction materials consonant with accepted standards of design, engineering, and fire prevention practices;

(2) permit to the fullest extent feasible the use of modern technical methods, devices, and improvements which tend to reduce the cost of construction consistent with reasonable requirements for the health and safety of the occupants or users of buildings and, consistent with the conservation of energy, by design requirements and criteria that will result in the efficient utilization of energy, whether used directly or in a refined form, in buildings;

(3) eliminate restrictive, obsolete, conflicting, and unnecessary building regulations and requirements which tend to increase unnecessarily construction costs, retard unnecessarily the use of proven new materials which have been found adequate through experience or testing, or provide unwarranted preferential treatment to types or classes of materials, products, or methods of construction;

(4) ensure that buildings constructed with public funds are accessible to and functional for physically handicapped persons where practicable and feasible;

(5) encourage efficiencies of design and insulation which enable buildings to be heated in the winter with the least possible quantities of energy and to be kept cool in the summer without air conditioning equipment or with the least possible use of such equipment;

(6) encourage efficiencies and criteria directed toward design of building envelopes with high thermal resistance and low air leakage and toward requiring practices in the design and selection of mechanical, electrical, and illumination systems which promote the efficient use of energy.

History: En. Sec. 7, Ch. 366, L. 1969; amd. Sec. 4, Ch. 226, L. 1974; amd. Sec. 1, Ch. 116, L. 1975; R.C.M. 1947, 69-2110.

50-60-202. Department to be sole state agency to promulgate building regulations. No state agency except the department may promulgate building regulations as defined in 50-60-101, except the state fire marshal may promulgate regulations relating to use of buildings and installation of equipment. The state fire marshal shall review building plans and regulations for conformity with rules promulgated by the department.

History: En. 69-2125 by Sec. 13, Ch. 504, L. 1977; R.C.M. 1947, 69-2125.

50-60-203. Department to adopt state building code by rule. (1) The department shall adopt rules relating to the construction of, the installation of equipment in, and standards for materials to be used in all buildings or classes of buildings, including provisions dealing with safety, sanitation, and conservation of energy. The department may amend or repeal such rules.

(2) The department may adopt by reference nationally recognized building codes in whole or in part, but this does not prevent the department from adopting rules more stringent than those contained in such codes.

(3) The rules, when adopted as provided in parts 1 through 4, constitute the "state building code" and are acceptable for the buildings to which they are applicable.

History: En. Sec. 8, Ch. 366, L. 1969; amd. Sec. 5, Ch. 226, L. 1974; amd. Sec. 2, Ch. 116, L. 1975; amd. Sec. 17, Ch. 504, L. 1975; amd. Sec. 1, Ch. 173, L. 1977; amd. Sec. 16, Ch. 187, L. 1977; amd. Sec. 2, Ch. 504, L. 1977; R.C.M. 1947, 69-2111(part).

50-60-204. Public hearing required — effective date of certain rules. (1) Except as provided in subsection (2) of this section, no rule, amendment, or repeal of the state building code may take effect until after a public hearing by the department.

(2) If a hearing has been held by the state fire marshal with respect to his duties contained in chapter 3 of this title or by the board of plumbers, the department of health and environmental sciences, or the state electrical board on a proposed rule relating to building and equipment standards in

their respective fields, a public hearing by the department is not required. The proposed rule is effective upon approval of the department and filing with the secretary of state as a part of the state building code.

History: En. Sec. 8, Ch. 366, L. 1969; amd. Sec. 5, Ch. 226, L. 1974; amd. Sec. 2, Ch. 116, L. 1975; amd. Sec. 17, Ch. 504, L. 1975; amd. Sec. 1, Ch. 173, L. 1977; amd. Sec. 16, Ch. 187, L. 1977; amd. Sec. 2, Ch. 504, L. 1977; R.C.M. 1947, 69-2111(part); amd. Sec. 17, Ch. 546, L. 1979; amd. Sec. 173, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Deleted the obsolete reference to the board of warm air heating, ventilation, and air conditioning in (2).

50-60-205. When state building code applies. If a municipality or county does not adopt a building code as provided in 50-60-301, the state building code applies within the municipal or county jurisdictional area and the state will enforce the code in these areas.

History: En. Sec. 9, Ch. 366, L. 1969; amd. Sec. 11, Ch. 226, L. 1974; amd. Sec. 3, Ch. 504, L. 1977; R.C.M. 1947, 69-2112(2).

50-60-206. Variances to state building code. (1) The department has the power, on satisfactory proof after a public hearing, to:

(a) vary or modify, in whole or part, the application of any provision or requirement of the state building code if strict compliance would cause any undue hardship; but no variance or modification shall affect adversely provisions for health, safety, and security, and equally safe and proper alternatives may be prescribed therefor;

(b) reverse, modify, or annul, in whole or part, any ruling, direction, determination, or order of any state agency affecting or relating to the construction of any building, the construction of which is pursuant or purports to be pursuant to the provisions of the state building code;

(c) review within 30 days after disapproval any application for permission for the construction of a building pursuant to the provisions of the state building code or plans or specifications submitted in connection therewith;

(d) reverse, modify, or annul the disapproval in whole or part;

(e) within 30 days make a determination that the application or plans or specifications are in compliance with the provisions of the state building code. If this determination is made, the officer charged with the duty shall issue any permit, license, certificate, authorization, or other document required for the construction.

(2) An application for a variance, modification, reversal, annulment, or review may be made by any person aggrieved pursuant to the Montana Administrative Procedure Act.

(3) An application for a variance, modification, reversal, annulment, or review shall stay all proceedings in furtherance of the action appealed from unless there is a showing by the state agency that a stay would involve imminent peril to life or property.

(4) The department, in hearings conducted under this section, shall not be bound by common-law or statutory rules of evidence.

History: En. Sec. 11, Ch. 366, L. 1969; amd. Sec. 7, Ch. 226, L. 1974; R.C.M. 1947, 69-2114.

Part 3

Municipal and County Building Codes

50-60-301. Municipal and county building codes authorized. (1) The local legislative body of a municipality or county may adopt a building code by ordinance to apply to the municipal or county jurisdictional area.

(2) A municipal or county building code may include only codes adopted by the department.

History: En. Sec. 9, Ch. 366, L. 1969; amd. Sec. 11, Ch. 226, L. 1974; amd. Sec. 3, Ch. 504, L. 1977; R.C.M. 1947, 69-2112(1).

50-60-302. Certification of municipal and county building codes. (1) A county or municipality may not enforce a building code unless the code adopted and a plan for enforcement of the code have been filed with the department.

(2) The department shall set forth rules and standards governing the certification of municipal and county building code programs as required in subsection (1).

History: En. Sec. 9, Ch. 366, L. 1969; amd. Sec. 11, Ch. 226, L. 1974; amd. Sec. 3, Ch. 504, L. 1977; R.C.M. 1947, 69-2112(3), (4).

50-60-303. Municipal appeal procedure. (1) If a municipality adopts a municipal building code, it shall also establish an appeal procedure by ordinance which is acceptable to the department.

(2) If a municipality does not adopt a code, appeals on the application of the state building code within the municipal jurisdictional area shall be made to the department.

History: En. Sec. 13, Ch. 366, L. 1969; amd. Sec. 11, Ch. 226, L. 1974; R.C.M. 1947, 69-2116.

Part 4

Factory-Built Buildings and Recreational Vehicles

50-60-401. Department to adopt rules for mobile homes and recreational vehicles. The department shall make rules embodying the fundamental principles adopted, recommended, or issued as USAS A119.1 and USAS A119.2 and amended from time to time by the United States of America standards institute (USASI), successor to the American standards association (ASA), and American national standards applicable to mobile homes and recreational vehicles as defined in 50-60-101.

History: En. Sec. 2, Ch. 348, L. 1971; amd. Sec. 9, Ch. 226, L. 1974; R.C.M. 1947, 69-2122.

50-60-402. Mobile homes and recreational vehicles to comply with standards. (1) No person, firm, or corporation may manufacture, sell, or offer for sale any new mobile home or recreational vehicle unless such mobile home or recreational vehicle, its components, systems, and appliances have been constructed and assembled in accordance with the standards herein defined.

(2) Any mobile home or recreational vehicle unit which has been approved by the department shall be deemed to be in full compliance with the standards and rules prescribed in parts 1 through 4.

(3) All mobile home or recreational vehicle units thus approved shall be acceptable as meeting the requirements of parts 1 through 4 throughout the state of Montana without further inspection or fees except for zoning, utility connections, and foundation permits required by local ordinance.

History: En. Sec. 3, Ch. 348, L. 1971; amd. Sec. 10, Ch. 226, L. 1974; amd. Sec. 2, Ch. 459, L. 1975; R.C.M. 1947, 69-2123.

50-60-403. Use of independent testing laboratories authorized. The department may utilize independent testing laboratories or the agencies of other states to determine if approved models of factory-built buildings or recreational vehicles are being constructed in accordance with the approved plans and specifications for said models.

History: En. Sec. 4, Ch. 348, L. 1971; amd. Sec. 11, Ch. 226, L. 1974; amd. Sec. 4, Ch. 504, L. 1977; R.C.M. 1947, 69-2124(part).

50-60-404. Enforcement of building construction standards for modular homes. (1) The provisions of this chapter apply to factory-built modular or prebuilt homes or buildings.

(2) A municipality may regulate the construction of factory-built modular or prebuilt homes or buildings as provided in 50-60-106 if:

(a) the homes or buildings are constructed inside the jurisdiction of the municipality;

(b) the homes or buildings are sold primarily to persons in the county in which the factory is located;

(c) the factory does not manufacture more than 100 homes or buildings a year; and

(d) the municipality has an agency or officer assigned to inspect and enforce building construction standards.

(3) Inspection and enforcement approval given by a municipality under this section may be recognized and accepted by any other municipality of the state to which the factory-built home or building is transported for final installation. Additional inspections need not be conducted.

History: En. Sec. 1, Ch. 440, L. 1979.

Part 5

Plumbing Installations

50-60-501. Declaration of public interest. It is hereby declared that the public health and welfare require that minimum standards for the planning, installing, altering, extending, repairing, and maintaining of plumbing systems be established for the protection of the people of the state.

History: En. Sec. 1, Ch. 251, L. 1959; R.C.M. 1947, 66-2412.

50-60-502. No penalties for hiring unlicensed plumbers. This part shall not be construed as imposing any penalty on any person for hiring or contracting with an unlicensed person to do work in the field of plumbing. However, any person who shall himself engage in the field of plumbing at a time when he is not duly licensed shall be subject to the penalties imposed by this part and Title 37, chapter 69.

History: En. Sec. 4, Ch. 251, L. 1959; amd. Sec. 8, Ch. 497, L. 1975; R.C.M. 1947, 66-2415.

50-60-503. Exceptions. This part shall not be construed to apply to or to affect plumbing installations in any mines, mills, smelters, refineries, public utilities, railroads, or plumbing installations on farms having their own individual water supply or sewage disposal system.

History: En. Sec. 15, Ch. 251, L. 1959; amd. Sec. 1, Ch. 44, L. 1973; amd. Sec. 12, Ch. 497, L. 1975; R.C.M. 1947, 66-2426.

50-60-504. Department to prescribe minimum standards. The department of administration shall by rule prescribe minimum standards which are uniform and which are thereafter effective for all plumbing installations or maintenance, except where exempt by 50-60-503.

History: En. Sec. 5, Ch. 251, L. 1959; amd. Sec. 18, Ch. 366, L. 1969; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 236, Ch. 350, L. 1974; amd. Sec. 9, Ch. 497, L. 1975; amd. Sec. 5, Ch. 504, L. 1977; R.C.M. 1947, 66-2416.

50-60-505. Permit required. (1) It is unlawful for any person to engage in the business, trade, or work having to do with the installation, removal, alteration, or repair of plumbing and drainage systems or parts thereof without first obtaining a permit from the department of administration.

(2) A separate permit shall be obtained for each building or structure.

(3) No person may allow any other person to do or cause to be done any work under a permit secured by the permittee except persons in his employ.

(4) When a permit has been obtained to connect an existing building or existing work to the public sewer or to connect to a new private disposal facility, backfilling of private sewage disposal facilities abandoned consequent to the connection is included in the permit.

History: En. Sec. 1, Ch. 236, L. 1967; amd. Sec. 240, Ch. 350, L. 1974; amd. Sec. 1, Ch. 446, L. 1975; amd. Sec. 1, Ch. 226, L. 1977; amd. Sec. 7, Ch. 504, L. 1977; R.C.M. 1947, 66-2427(part).

50-60-506. Exceptions to permit requirement. (1) No permit is required for any minor replacement or repair work, the performance of which does not have a significant potential for creating a condition hazardous to public health and safety.

(2) No permit is required where the installation is exempt under the provisions of 37-69-102 or 50-60-503.

(3) No state permit is required whenever the installation occurs in an area governed by a municipality and where there is in effect a municipal building code which covers plumbing installations and which provides inspection procedures.

(4) Nothing contained in this part shall prohibit the owner of residential property from making an installation for all sanitary plumbing and potable water supply piping without a permit providing he does the work himself.

(5) The provisions of this part do not apply to regularly employed maintenance personnel doing maintenance work on the business premises of their employer unless work is subject to the permit provisions of this part.

History: En. Sec. 1, Ch. 236, L. 1967; amd. Sec. 240, Ch. 350, L. 1974; amd. Sec. 1, Ch. 446, L. 1975; amd. Sec. 1, Ch. 226, L. 1977; amd. Sec. 7, Ch. 504, L. 1977; R.C.M. 1947, 66-2427(2).

50-60-507. Application for and issuance of permit. (1) A person required to apply for a permit shall make application on forms provided by the department of administration or authorized representative. He shall give a description of the character of the work proposed to be done and the location, ownership, occupancy, and use of the premises in connection therewith.

(2) The department or its authorized representative may require sketches, specifications, or drawings and such other information it deems necessary in order to determine the scope of the work contemplated.

(3) If the department determines that the sketches, specifications, drawings, descriptions, and information furnished by the applicant are in compliance with the state plumbing code, it shall issue the permit applied for upon payment of the required fee as established by the department.

History: En. Sec. 1, Ch. 236, L. 1967; amd. Sec. 240, Ch. 350, L. 1974; amd. Sec. 1, Ch. 446, L. 1975; amd. Sec. 1, Ch. 226, L. 1977; amd. Sec. 7, Ch. 504, L. 1977; R.C.M. 1947, 66-2427(3).

50-60-508. Permit fees. (1) The department of administration shall establish permit fees in accordance with the Montana Administrative Procedure Act and the fees shall be deposited to the earmarked revenue fund of the department for use in the administration and enforcement of this part and the Montana state plumbing code.

(2) For the purpose of 50-60-505 through 50-60-513, a sanitary plumbing outlet on or to which a plumbing fixture or appliance may be set or attached shall be construed to be a fixture. Fees for reconnection and retest of plumbing systems in relocated buildings shall be based on the number of plumbing fixtures, gas systems, water heaters, and the like involved.

History: En. Sec. 1, Ch. 236, L. 1967; amd. Sec. 240, Ch. 350, L. 1974; amd. Sec. 1, Ch. 446, L. 1975; amd. Sec. 1, Ch. 226, L. 1977; amd. Sec. 7, Ch. 504, L. 1977; R.C.M. 1947, 66-2427(part).

50-60-509. Person commencing work without a permit to pay double the permit fee — exception. Any person who commences any work for which a permit is required without first obtaining a permit shall, if subsequently permitted to obtain a permit, pay double the permit fee for the work, except that this provision does not apply to emergency work when it is proved to the satisfaction of the department of administration or its authorized representative that the work was urgently necessary and that it was not practical to obtain a permit before the commencement of the work. In all such cases, a permit shall be obtained as soon as it is practical to do so, and if there is unreasonable delay in applying for the permit, a double fee shall be charged.

History: En. Sec. 1, Ch. 236, L. 1967; amd. Sec. 240, Ch. 350, L. 1974; amd. Sec. 1, Ch. 446, L. 1975; amd. Sec. 1, Ch. 226, L. 1977; amd. Sec. 7, Ch. 504, L. 1977; R.C.M. 1947, 66-2427(part).

50-60-510. Inspection by department to insure compliance. All plumbing and drainage systems may be inspected by the department of administration or its authorized representative to insure compliance with the requirements of the state plumbing code.

History: En. Sec. 1, Ch. 236, L. 1967; amd. Sec. 240, Ch. 350, L. 1974; amd. Sec. 1, Ch. 446, L. 1975; amd. Sec. 1, Ch. 226, L. 1977; amd. Sec. 7, Ch. 504, L. 1977; R.C.M. 1947, 66-2427(5).

50-60-511. Duty of permittee regarding inspection and compliance. (1) It is the duty of the person doing work authorized by the permit to notify the department of administration, orally or in writing, that the work is ready for inspection. The notification shall be given not less than 24 hours before the work is to be inspected.

(2) It is the duty of the person doing the work authorized by the permit to ensure that the work performed before notification and after notification pending inspection complies with the state plumbing code.

History: En. Sec. 1, Ch. 236, L. 1967; amd. Sec. 240, Ch. 350, L. 1974; amd. Sec. 1, Ch. 446, L. 1975; amd. Sec. 1, Ch. 226, L. 1977; amd. Sec. 7, Ch. 504, L. 1977; R.C.M. 1947, 66-2427(6).

50-60-512. Department authorized to order work stopped for noncompliance. Whenever any work is being done contrary to the provisions of the state plumbing code, the department of administration or its authorized representative may, after a hearing conducted under the provisions of the Montana Administrative Procedure Act, order work stopped by notice in writing served on any person engaged in the work.

History: En. Sec. 1, Ch. 236, L. 1967; amd. Sec. 240, Ch. 350, L. 1974; amd. Sec. 1, Ch. 446, L. 1975; amd. Sec. 1, Ch. 226, L. 1977; amd. Sec. 7, Ch. 504, L. 1977; R.C.M. 1947, 66-2427(7).

50-60-513. Suspension or revocation of permit. The department of administration may suspend or revoke a permit whenever it is issued in error or on the basis of incorrect information supplied or work performed thereunder is in violation of any of the provisions of this part or Title 37, chapter 69.

History: En. Sec. 1, Ch. 236, L. 1967; amd. Sec. 240, Ch. 350, L. 1974; amd. Sec. 1, Ch. 446, L. 1975; amd. Sec. 1, Ch. 226, L. 1977; amd. Sec. 7, Ch. 504, L. 1977; R.C.M. 1947, 66-2427(8).

50-60-514. District court — jurisdiction — restraining orders. The district court of any county has jurisdiction in equity, on application of the department of administration, to restrain from connection any new plumbing installations on finding, after hearing, that the plumbing is inferior to the standards of the state plumbing code.

History: En. Sec. 6, Ch. 251, L. 1959; amd. Sec. 237, Ch. 350, L. 1974; amd. Sec. 6, Ch. 504, L. 1977; R.C.M. 1947, 66-2417.

50-60-515. Penalty for violations — exceptions. A person who works at the field of plumbing or maintains or conducts a plumbing business or an individual who connects or disconnects plumbing from a public water or sewer system in violation of any provisions of this part or at a time when he is not exempt from the provisions of this part pursuant to the provisions of a duly enacted and subsisting ordinance of a city or town is guilty of a misdemeanor and, upon conviction thereof in any court of competent jurisdiction, shall be punished by a fine of not less than $10 and not more than $100 for each separate offense. However, this part shall not be construed to apply to or affect plumbing or pipefitting as indicated in the 37-69-102 and 50-60-503 exceptions.

History: En. Sec. 11, Ch. 203, L. 1949; amd. Sec. 4, Ch. 185, L. 1961; amd. Sec. 7, Ch. 497, L. 1975; amd. Sec. 23, Ch. 101, L. 1977; R.C.M. 1947, 66-2411.

Part 6

Electrical Installations

50-60-601. Purpose. The purpose of this part is to protect the health and safety of the people of this state from the danger of electrically caused shocks, fires, and explosions; to protect property from the hazard of electrically caused fires and explosions; to establish a procedure for determining where and by whom electrical installations are to be made; and to insure that the electrical installations and electrical products made and sold in this state meet minimum safety standards.

History: En. Sec. 2, Ch. 148, L. 1965; amd. Sec. 19, Ch. 366, L. 1969; amd. Sec. 1, Ch. 425, L. 1973; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 269, Ch. 350, L. 1974; amd. Sec. 8, Ch. 504, L. 1977; R.C.M. 1947, 66-2802(part).

50-60-602. Exceptions. (1) Nothing in this part shall be deemed to apply to the installation, alteration, or repair of electrical signal or communications equipment owned or operated by a public utility or a city.

(2) The inspection provisions of this part do not apply to regularly employed maintenance electricians doing maintenance work on the business premises of their employer nor do they apply to line work on the business premises of the employer or to ordinary and customary in-plant or on-site installations, modifications, additions, or repairs.

(3) Any person who plugs in an electrical appliance where approved electrical outlet is already installed shall not be considered as an installer.

(4) No provisions of this part shall in any manner interfere with, hamper, preclude, or prohibit any vendor of any electrical appliance from selling, delivering, and connecting any electrical appliance if the connection does not necessitate the installation of electrical wiring of the structure where the appliance is to be connected.

History: En. Sec. 12, Ch. 148, L. 1965; amd. Sec. 1, Ch. 423, L. 1973; amd. Sec. 1, Ch. 269, L. 1975; R.C.M. 1947, 66-2812(part).

50-60-603. Electrical installations to comply with building codes adopted by department. (1) All installations in this state of wires and equipment to convey electric current and installations of apparatus to be operated by current, except as provided in 50-60-602, shall be made substantially in accord with building codes adopted by the department of administration.

(2) Rules and standards relating to buildings and equipment shall be promulgated by the department.

History: En. Sec. 2, Ch. 148, L. 1965; amd. Sec. 19, Ch. 366, L. 1969; amd. Sec. 1, Ch. 425, L. 1973; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 269, Ch. 350, L. 1974; amd. Sec. 8, Ch. 504, L. 1977; R.C.M. 1947, 66-2802(part).

50-60-604. Department to make inspections, issue inspection tags, and establish fees. The department of administration shall make inspections of electrical installations, issue inspection tags for these installations, and establish and charge a reasonable and uniform fee for the inspections, which may not exceed the expense of providing the inspection.

History: En. 66-2805.1 by Sec. 273, Ch. 350, L. 1974; amd. Sec. 9, Ch. 504, L. 1977; R.C.M. 1947, 66-2805.1(1).

50-60-605. Power supplier not to energize installation without inspection tag. Individuals, firms, cooperatives, corporations, or municipalities selling electricity are power suppliers. Except for temporary connections which the department may authorize by rule for a period not exceeding 14 days without a preconnection inspection, power suppliers may not connect with or energize an electrical installation under this part unless the owner or a licensed electrical contractor has delivered to the power supplier an inspection tag covering the installation, issued by the department of administration.

History: En. 66-2805.1 by Sec. 273, Ch. 350, L. 1974; amd. Sec. 9, Ch. 504, L. 1977; R.C.M. 1947, 66-2805.1(2); amd. Sec. 1, Ch. 101, L. 1979.

50-60-606. Power supplier to deliver inspection tag to department after installation energized. Immediately after an installation has been energized, the power supplier shall deliver to the department of administration the inspection tag covering the installation.

History: En. 66-2805.1 by Sec. 273, Ch. 350, L. 1974; amd. Sec. 9, Ch. 504, L. 1977; R.C.M. 1947, 66-2805.1(3).

50-60-607. Unlawful acts. It is unlawful for a person, partnership, company, firm, association, or corporation other than a power supplier to energize an electrical installation under this part unless an application for an inspection tag covering the installation, together with the inspection fee, has been forwarded to the department of administration.

History: En. 66-2805.1 by Sec. 273, Ch. 350, L. 1974; amd. Sec. 9, Ch. 504, L. 1977; R.C.M. 1947, 66-2805.1(4).

Part 7

Elevators

50-60-701. Inspection of passenger elevators and escalators — fees. (1) All passenger elevators and escalators in public places may be inspected by the department to insure compliance with the requirements of the state building code. The department shall establish and charge a reasonable and uniform fee for the inspections that may not exceed the expense of providing the inspection.

(2) In lieu of inspection by the department, inspections of passenger elevators and escalators to assure compliance with the state building code may be made by:

(a) a maintenance company representative certified by the department who regularly maintains or services the elevator or escalator equipment; or

(b) an insurance company representative certified by the department who regularly inspects an elevator or escalator insured by the company against public liability and who maintains a service record of the elevator or escalator.

(3) When an inspection of a passenger elevator or escalator is made pursuant to subsection (2), a copy of the condition report must be provided to the owner and must be sent to the department. The department may not charge more than $10 for receiving and processing a condition report for each elevator or escalator in any building and for issuing certificates of inspection therefor if the certified maintenance or insurance company inspector doing the inspection certifies to the department that all deficient elevator or escalator conditions noted in the condition report have been corrected and no follow-up by the department in that regard is necessary.

History: En. Sec. 2, Ch. 315, L. 1979; amd. Sec. 1, Ch. 569, L. 1981.

Compiler's Comments

1981 Amendment: Added the last sentence of (3) which sets the maximum fee that the department of administration can charge for receiving and processing elevator and escalator condition reports.

50-60-702. Department to adopt inspection standards — certification of inspectors. (1) The department shall adopt standards for passenger elevator and escalator inspections that assure compliance with the requirements of the state building code.

(2) The department shall adopt rules for the certification of maintenance and insurance company inspectors who may inspect passenger elevators and escalators pursuant to 50-60-701.

History: En. Sec. 3, Ch. 315, L. 1979.

50-60-703. When inspection of elevators not necessary. Elevators that do not carry passengers do not need to be inspected by the department.

History: En. Sec. 4, Ch. 315, L. 1979.

CHAPTER 61

FIRE SAFETY IN PUBLIC BUILDINGS

Part 1 — General Provisions

Section

50-61-101. Purpose of chapter.
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50-61-103. Application of chapter — definitions.
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50-61-105. Specifications for adequate fire escapes.
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50-61-109. Safety requirements for corridors.
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50-61-118. Injunction authorized.
50-61-119. Violation of chapter a misdemeanor.

Part 1

General Provisions

50-61-101. Purpose of chapter. The purpose and intent of this chapter is to provide for the public safety in case of fire in those occupancies specified in 50-61-103; to provide for fire escapes, fire-fighting apparatus, fire alarms; and to provide for inspection of such buildings and premises by specified officers.

History: En. Sec. 1, Ch. 279, L. 1947; amd. Sec. 9, Ch. 229, L. 1967; R.C.M. 1947, 69-1801.

50-61-102. Fire marshal to administer chapter. The state fire marshal has general charge and supervision of the enforcement of this chapter, and the officers enumerated in 50-61-114 shall act under his general charge and supervision, shall assist him in giving effect to this chapter, and are subject to his direction and the rules adopted for the enforcement of this chapter.

History: En. Sec. 8, Ch. 279, L. 1947; amd. Sec. 11, Ch. 229, L. 1967; amd. Sec. 13, Ch. 187, L. 1977; R.C.M. 1947, 69-1808(6).

50-61-103. Application of chapter — definitions. This chapter applies to the occupancies defined below:

(1) "Assembly occupancy" means the occupancy or use of a building or structure or any portion thereof by a gathering of persons for civic, political, travel, religious, social, or recreational purposes, including among others:

(a) armories;
(b) assembly halls;
(c) auditoriums;
(d) bowling alleys;
(e) broadcasting studios;
(f) chapels;
(g) churches;
(h) club rooms;
(i) dance halls;
(j) exhibition rooms;
(k) gymnasiums;
(l) lecture halls;
(m) lodge rooms;
(n) motion picture theaters;
(o) museums;
(p) night clubs;
(q) opera houses;
(r) passenger stations;
(s) pool rooms;
(t) recreation areas;
(u) restaurants;
(v) skating rinks;
(w) television studios;
(x) theaters; and
(y) taverns.

(2) "Business occupancy" means the occupancy or use of a building or structure or any portion thereof for the transaction of business or the rendering or receiving of professional services, including among others:

(a) banks;
(b) barbershops;
(c) beauty parlors;
(d) office buildings;
(e) radio stations;
(f) telephone exchanges; and
(g) television stations.

(3) "Educational occupancy" means the occupancy or use of a building or structure or any portion thereof by persons assembled for the purpose of learning or receiving educational instruction, including among others:

(a) academies;
(b) colleges;
(c) libraries;
(d) schools; and
(e) universities.

(4) "Industrial occupancy" means the occupancy or use of a building or structure or any portion thereof for assembling, fabricating, finishing, manufacturing, packaging, or processing operations, including among others:

(a) assembly plants;
(b) creameries;
(c) electric substations;
(d) factories;
(e) ice plants;
(f) laboratories;
(g) laundries;
(h) manufacturing plants;
(i) mills;
(j) power plants;
(k) processing plants;
(l) pumping stations;
(m) repair garages;
(n) smokehouses; and
(o) workshops.

(5) "Institutional occupancy" means the occupancy or use of a building or structure or any portion thereof by persons harbored or detained to receive medical, charitable, or other care or treatment or by persons involuntarily detained, including among others:

(a) asylums;
(b) homes for the aged;
(c) hospitals;
(d) houses of correction;
(e) day-care facilities;
(f) infirmaries;
(g) jails;
(h) nurseries;
(i) orphanages;
(j) nursing homes;
(k) penal institutions;
(l) reformatories;
(m) sanitariums;
(n) long-term care facilities; and
(o) boarding homes.

(6) "Residential occupancy" means the occupancy or use of a building or structure or any portion thereof by persons for whom sleeping accommodations are provided and who are not harbored or detained to receive medical, charitable, or other care or treatment or are not involuntarily detained, including among others (but not including single-family private houses):

(a) apartments;
(b) clubhouses;
(c) convents;
(d) dormitories;
(e) dwellings;
(f) hotels;
(g) motels;
(h) multifamily houses; and
(i) lodging houses.

History: En. Sec. 2, Ch. 279, L. 1947; amd. Sec. 10, Ch. 229, L. 1967; amd. Sec. 12, Ch. 187, L. 1977; R.C.M. 1947, 69-1802.

50-61-104. Fire escape requirements. (1) All buildings described in 50-61-103, except private residences, of two or more stories in height shall be equipped with not less than one adequate fire escape for each 5,000 square feet of lot area or fraction thereof occupied by the building.

(2) "First story" is defined as being the story the ceiling of which is first above the level of the grade, said ceiling being an average of 5 feet or more above the ground surrounding the building.

History: En. Sec. 3, Ch. 279, L. 1947; amd. Sec. 1, Ch. 159, L. 1949; R.C.M. 1947, 69-1803.

50-61-105. Specifications for adequate fire escapes. (1) Adequate fire escapes provided for in the preceding section shall be of interior or exterior type.

(2) It is hereby made the duty of the state fire marshal to prepare and promulgate minimum specifications for the construction and erection of each type of fire escape authorized by this chapter, which specifications shall be based upon a working stress of not less than 16,000 pounds to the square inch for steel, 12,000 pounds to the square inch for wrought iron, and 700 pounds to the square inch for concrete.

(3) Exterior fire escapes shall be constructed of concrete stairway, an iron or steel stairway, an iron or steel straight chute, or they may be constructed of other fire-resistive material of equal strength, to which there shall be free, unoccupied, and unobstructed passage and free, unoccupied, and unobstructed egress and ingress to and from the interior of the building. Where outside stairways do not reach the ground, same must have an iron stairway from the lowest balcony to the ground, counterbalanced so that same shall remain in a horizontal position when not in use. This stairway must be constructed in the same manner and of the same material as those of the upper balconies. When a suspended weight is used as a counterbalance, proper guides or places must be provided.

(4) Specifications for interior fire escapes shall require that they be enclosed with noncombustible material and that all stairways, halls, air chutes, laundry chutes, and all door and window openings in such interior fire escapes be properly protected with automatic or self-closing fire doors or shutters and that all stairway escapes be continuous and suitably connected with the roof of the building.

(5) No fire escape shall be approved as complying with the provisions of this chapter, the material and erection of which are not at least the equivalent of the minimum specifications promulgated by the state fire marshal.

History: En. Sec. 4, Ch. 279, L. 1947; R.C.M. 1947, 69-1804.

50-61-106. Unlawful to obstruct fire escape. It shall be unlawful to obstruct in any manner whatsoever any fire escape required by the provisions of this chapter or hallway, corridor, or entranceway leading thereto.

History: **En. Sec. 5, Ch. 279, L. 1947; R.C.M. 1947, 69-1805(part).**

50-61-107. Guide signs and exit lights required. It shall be the duty of the owner entitled to the beneficial use, rental, or control or, if the owner be a nonresident, the occupant or lessee of any building where fire escapes are required also to provide and maintain in good condition at all times therein proper guide signs and exit lights, which signs and lights shall be of a sufficient number on each floor to indicate the location of fire escapes and all entrances thereto.

History: **En. Sec. 5, Ch. 279, L. 1947; R.C.M. 1947, 69-1805(part).**

50-61-108. Alarm system required. (1) All buildings within the scope of this chapter occupied at night by more than 10 persons, if more than one story in height, shall have in each story an electrically operated gong or gongs to be operated by any one of a number of switches, one of which shall be on each floor. Said gong or gongs shall not be less than 6 inches in diameter and installed with not less than number 14 rubber covered wire.

(2) In lieu of said gong or gongs, such buildings may be equipped with a telephone alarm system operated from a central switchboard. Wherever such telephone system is used in such buildings, an attendant shall be on duty at the central switchboard 24 hours daily, the alarm from such switchboard shall be simultaneous in all rooms of the building, and a single switch at the switchboard shall operate said telephone alarm system.

History: **En. Sec. 5, Ch. 279, L. 1947; R.C.M. 1947, 69-1805(part).**

50-61-109. Safety requirements for corridors. (1) In all buildings hereafter erected or occupied at night for sleeping purposes and which require a fire escape or fire escapes, the public corridors shall extend to all fire escapes.

(2) In all buildings erected at July 1, 1947, not more than one room shall intervene between the corridor and the fire escape. When such a room intervenes, said corridor shall have a glass panel extending from the top rail to the door knob and the glass shall be of a kind that is easily broken. Any lock on such corridor door shall be of a nightlatch type that can be operated from inside the room without a key. Close to such door in the corridor side shall be kept an adequate instrument for breaking the glass, with an explanatory label, subject to the approval of the local fire chief or the state fire marshal.

History: **En. Sec. 6, Ch. 279, L. 1947; R.C.M. 1947, 69-1806(b), (c).**

50-61-110. Safety requirements for exterior stairways. Exterior stairways hereinafter installed shall be located on buildings as remote from interior stairways as possible.

History: **En. Sec. 6, Ch. 279, L. 1947; R.C.M. 1947, 69-1806(a).**

50-61-111. Fire extinguisher requirements. No fire extinguisher or extinguishers containing any of the following liquids: Carbon tetrachloride ($CCl4$); Chlorobromomethane ($CH2BrCl$); Azeotropic chlormethane (CM-7);

Dibromodifluoromethane (CBr2F2); 1, 2-Dibromo-2-chloro-1, 1, 2-trifluoroethane (CBrF2CBrClF); 1, 2-Dibromo-2, 2-difluoroethane (CH2BrCBrF2); Methyl bromide (CH3Br); Ethylene dibromide (CH2BrCH2Br); 1, 2-Dibromotetrafluoroethane (CBrF2CBrF2); Hydrogen bromide (HBr); Methylene bromide (CH2Br2); Bromodifluoromethane (CHBrF2); and Dichlorodifluoromethane (CCl2F2) or any other toxic or poisonous vaporizing liquid shall be kept or maintained in or upon any building without written approval by the state fire marshal or his deputy.

History: En. Sec. 7, Ch. 279, L. 1947; amd. Sec. 1, Ch. 227, L. 1959; amd. Sec. 1, Ch. 254, L. 1975; R.C.M. 1947, 69-1807.

50-61-112. Prior approval required for construction or alteration of educational and institutional occupancies. (1) Within an incorporated municipality, an educational or institutional occupancy, whether public or private, may not be constructed or have alterations made costing $1,500 or more until sketches or architectural plans for the construction or alteration, whichever are available, are submitted to the state fire marshal and approved by him.

(2) Outside an incorporated municipality, an assembly, educational, or institutional occupancy may not be constructed or have alterations made costing $1,500 or more until a permit has been issued for the construction or alteration by the county commissioners. A fee of $10 shall be paid to the county treasurer for each permit. A copy of the permit shall be furnished to the county assessor. No permit may be issued until sketches or architectural plans for the construction or alteration, whichever are available, are submitted to the state fire marshal and approved by him. The fire marshal and county sheriffs are responsible for enforcing the provisions of this subsection.

History: En. Sec. 8, Ch. 279, L. 1947; amd. Sec. 11, Ch. 229, L. 1967; amd. Sec. 13, Ch. 187, L. 1977; R.C.M. 1947, 69-1808(1), (2).

50-61-113. Prior approval required for construction of state-owned building designed for human occupancy. A building designed for human occupancy owned or controlled by the state may not be constructed until plans for the construction have been submitted to the state fire marshal and approved by him.

History: En. Sec. 8, Ch. 279, L. 1947; amd. Sec. 11, Ch. 229, L. 1967; amd. Sec. 13, Ch. 187, L. 1977; R.C.M. 1947, 69-1808(3).

50-61-114. Fire chief and county sheriff to make inspections. The chief of the fire department of each municipality or district where a fire department is established and the county sheriff or deputy fire marshals where no fire department exists shall enter into all buildings and upon all premises within their jurisdiction at least once each 6 months for the purpose of examining the premises for violations of this chapter. The inspection shall include but is not limited to testing fire alarms and fire extinguishers, examining fire hose, attachments, and other fire apparatus, and examining fire escapes. Copies of the inspection shall be filed in the office of the state fire marshal on forms to be provided by him.

History: En. Sec. 8, Ch. 279, L. 1947; amd. Sec. 11, Ch. 229, L. 1967; amd. Sec. 13, Ch. 187, L. 1977; R.C.M. 1947, 69-1808(4).

50-61-115. Notice of violations. (1) When a building is found which requires the erection of fire escapes and upon which fire escapes have not been erected according to the provisions of this chapter or if fire hoses, fire extinguishers, fire alarms, or other fire apparatus is found to be lacking or defective or not in good working condition, the person making the inspection or the state fire marshal shall serve a written notice upon the party whose duty it is to erect the fire escapes or maintain such fire apparatus.

(2) The notice shall specify the time within which the fire escapes shall be erected or the defective conditions remedied, which may not be more than 90 days.

(3) The notice is served if delivered to the person to be notified, if left with any adult person at the usual residence or place of business of the person to be notified, or if deposited in the post office directed to the last known address of the person to be notified. Whenever buildings are managed and controlled by a board of trustees, board of commissioners, or other governing body, the notice is served if delivered to the president, secretary, or treasurer of the board of trustees, board of commissioners, or other governing body.

History: **En. Sec. 8, Ch. 279, L. 1947; amd. Sec. 11, Ch. 229, L. 1967; amd. Sec. 13, Ch. 187, L. 1977; R.C.M. 1947, 69-1808(part).**

50-61-116. Lessee who corrects violations entitled to reimbursement. The occupant or lessee of any building who is required to erect fire escapes under the provisions of this chapter is entitled to reimburse himself for the cost and expense of erecting the fire escapes out of the rent or lease money of the premises, and the reimbursement is not a breach of any existing lease, contract, or convenant thereof or grounds for any action or damage ouster.

History: **En. Sec. 8, Ch. 279, L. 1947; amd. Sec. 11, Ch. 229, L. 1967; amd. Sec. 13, Ch. 187, L. 1977; R.C.M. 1947, 69-1808(part).**

50-61-117. Duty of fire marshal to file complaints of violations — duty of county attorney to prosecute complaints. It shall be the duty of the state fire marshal or any person authorized to act in his stead to file complaint for violations of the provisions of this chapter in any court of competent jurisdiction within the county where said violations occur, and it shall be the duty of the county attorney of such county to forthwith prosecute all such complaints so filed.

History: **En. Sec. 10, Ch. 279, L. 1947; R.C.M. 1947, 69-1809(part).**

50-61-118. Injunction authorized. In addition to the other remedies and penalties herein provided, upon the failure of any of the parties charged with the duty to erect fire escapes or to install and maintain fire alarms or fire extinguishers or other fire apparatus in accordance with this chapter, the attorney general of the state or any county attorney of the county where the building is located shall bring an action against the owner, lessee, and occupants of the building for an injunction enjoining the further occupancy of it until it is in compliance with this chapter. The action may be brought in the county where such building is located.

History: **En. Sec. 11, Ch. 279, L. 1947; R.C.M. 1947, 69-1810; amd. Sec. 20, Ch. 37, L. 1979.**

50-61-119. Violation of chapter a misdemeanor. (1) Any person failing, neglecting, or refusing to comply with any of the provisions of this chapter shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than $50.

(2) Each day's failure to comply with any of the provisions of this chapter, after the expiration of the time stipulated in the written notice provided for herein, shall constitute a separate offense.

History: En. Sec. 10, Ch. 279, L. 1947; R.C.M. 1947, 69-1809(part).

CHAPTER 62

FIRE HAZARDS

Part 1 — Removal of Hazards

Section
50-62-101. Entering of buildings for purpose of examination authorized.
50-62-102. Structures creating fire hazard a public nuisance.
50-62-103. Service of order to repair or demolish structure.
50-62-104. Answer of owner or occupant.
50-62-105. Default judgment.
50-62-106. Hearing and judgment.
50-62-107. Proceedings on failure to comply with order.
50-62-108. Conditions or materials creating fire hazard — order to remedy.
50-62-109. Failure to comply with order.
50-62-110. Appeal to state fire marshal.
50-62-111. Penalty for failure to comply with order to correct.

Part 1

Removal of Hazards

50-62-101. Entering of buildings for purpose of examination authorized. The state fire marshal, his deputies and subordinates, the chief of the fire department of each municipality or district where a fire department is established, or the county sheriff where no fire department exists at all reasonable hours may enter into all buildings and upon all premises within their jurisdiction for the purpose of determining whether the building or premise conforms to laws and rules relating to fire hazards and fire safety.

History: En. Sec. 15, Ch. 148, L. 1911; re-en. Sec. 2752, R.C.M. 1921; re-en. Sec. 2752, R.C.M. 1935; amd. Sec. 8, Ch. 229, L. 1967; R.C.M. 1947, 82-1218.

50-62-102. Structures creating fire hazard a public nuisance. Any building or other structure which for want of proper repair; by reason of age, dilapidated condition, defective or poorly installed wiring and equipment, defective chimneys, defective gas connections, defective heating apparatus; or for any other cause or reason is especially liable to fire and which is so situated as to endanger other buildings and property in the vicinity is hereby declared to be a public nuisance.

History: En. Sec. 16, Ch. 148, L. 1911; amd. Sec. 2, Ch. 95, L. 1913; amd. Sec. 2, Ch. 212, L. 1919; re-en. Sec. 2753, R.C.M. 1921; amd. Sec. 1, Ch. 139, L. 1929; re-en. Sec. 2753, R.C.M. 1935; R.C.M. 1947, 82-1219(part).

50-62-103. Service of order to repair or demolish structure. (1) If the state fire marshal, a deputy state fire marshal, or any officer mentioned in 50-62-101, upon an examination or inspection, finds that a building or other structure which for want of proper repair or by reason of age and dilapidated condition, defective or poorly installed electric wiring or equipment, defective chimneys, defective gas connections or defective heating apparatus or for any other cause or reason is especially liable to fire and is so situated as to endanger other buildings or property in the vicinity, he shall order the structure to be repaired, torn down, or demolished and all materials removed and all dangerous conditions remedied.

(2) The order shall be in writing, shall recite the grounds therefor, and shall be filed in the office of the clerk of the district court of the county in which the building or structure ordered to be altered, repaired, or demolished is situated, and thereupon all further proceedings for the enforcement thereof shall be had in that court.

(3) A copy of the order filed as aforesaid, together with a written notice that it has been filed and will be put in force unless the owner, occupant, or tenant shall file with the clerk of the court his objections or answer thereto within the time specified in 50-62-104, shall be served upon the owner of the building or structure directed to be altered, repaired, or demolished. If there is a tenant occupying the building, service shall also be made upon him. Service shall be made upon the owner and occupant, if there is one, personally either within or without the state.

(4) If the whereabouts of the owner is unknown and he cannot be ascertained by the state fire marshal by the exercise of reasonable diligence, then upon his filing in the office of the clerk of the district court his affidavit to this effect, service of the notice upon the owner may be made by the clerk of the district court by publication of it once in each week for 3 successive weeks in a newspaper printed and published in the county in which the building or structure is located and by posting a copy thereof in a conspicuous place upon the building or structure, and the service so made is complete upon the expiration of the publication period. Proof of service of the notice shall be filed in the office of the clerk of the district court within 5 days after the service thereof.

History: En. Sec. 16, Ch. 148, L. 1911; amd. Sec. 2, Ch. 95, L. 1913; amd. Sec. 2, Ch. 212, L. 1919; re-en. Sec. 2753, R.C.M. 1921; amd. Sec. 1, Ch. 139, L. 1929; re-en. Sec. 2753, R.C.M. 1935; R.C.M. 1947, 82-1219(part); amd. Sec. 21, Ch. 37, L. 1979.

50-62-104. Answer of owner or occupant. (1) The owner of any building so condemned or any occupant or lessee upon whom such notice or order shall be served, within 20 days from the date of such service, may file with the clerk of the district court and serve upon the said state fire marshal, a deputy state fire marshal, or any officer mentioned in 50-62-101 written objections to said order in the form of a verified answer denying the existence of any of the facts therein cited which he desires to controvert.

(2) If an answer be filed and served, the court shall hear and determine the issues so raised and give judgment thereon.

History: En. Sec. 2753-A, Ch. 139, L. 1929; re-en. Sec. 2753.1, R.C.M. 1935; R.C.M. 1947, 82-1220(part).

50-62-105. Default judgment. If no answer is so filed and served, the owner and all other persons in interest shall be deemed to be in default, and thereupon the court shall affirm the order of condemnation and direct the state fire marshal to proceed with the enforcement thereof.

History: En. Sec. 2753-A, Ch. 139, L. 1929; re-en. Sec. 2753.1, R.C.M. 1935; R.C.M. 1947, 82-1220(part).

50-62-106. Hearing and judgment. (1) The court, upon application of the state fire marshal, deputy state fire marshal, or any officer mentioned in 50-62-101, shall make its order fixing a time and place for such hearing, which time shall be within 20 days from the date of the filing of the answer or as soon thereafter as the matter may be heard.

(2) If, upon such trial the order shall be sustained, judgment shall be given accordingly and a time shall be fixed within which the building or structure shall be altered, destroyed, or repaired in compliance with such order, but otherwise the court shall annul or set aside the order of condemnation.

History: En. Sec. 2753-B, Ch. 139, L. 1929; re-en. Sec. 2753.2, R.C.M. 1935; R.C.M. 1947, 82-1221.

50-62-107. Proceedings on failure to comply with order. (1) If the owner or other party in interest shall fail to comply with the order of condemnation of a building or structure within the time fixed by the court in case a trial is had therein, then the state fire marshal or any other officer authorized in 50-62-101 may proceed to cause such building or structure to be altered, repaired, or demolished in accordance with the directions contained in such order.

(2) Where a building or structure is demolished in accordance with such order, the state fire marshal or any other officer authorized in 50-62-101 may sell or dispose of the salvaged materials therefrom at public auction upon 5 days' posted notice. This person shall keep an accurate account of the expenses incurred in carrying out the order and shall credit thereon the proceeds of such salvage sale, if any, and shall report his action thereon with a statement of said expenses or the balance thereof, the expense incurred by him, and the amount, if any, received from such salvage sale to the court for approval and allowance. The court shall examine, correct if necessary, and allow said expense account, and said amount so allowed shall constitute a lien against the real estate on which said building or structure is or was situated. If the amount thereof is not paid by the owner or other party in interest within 3 months after the account has been examined and approved by the court, the real estate upon which said building or structure is or was situated shall be sold under proper order of court by the sheriff of the county in which the same is situated in the manner provided by law for the sale of real estate upon execution, and the proceeds of said sale shall be paid into the treasury of the governmental unit which incurred the expenses. If the amount received as salvage or on sale shall exceed the expense incurred by the governmental unit, the court shall direct the payment of the surplus to those parties with encumbrances, mortgages, or liens on the real estate in order of their priority and any surplus thereafter to the owner or the payment of the same into court for their use and benefit.

History: En. Sec. 2753-C, Ch. 139, L. 1929; re-en. Sec. 2753.3, R.C.M. 1935; amd. Sec. 1, Ch. 418, L. 1975; R.C.M. 1947, 82-1222; amd. Sec. 1, Ch. 278, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "may" for "shall" before "proceed to cause such building" in (1).

50-62-108. Conditions or materials creating fire hazard — order to remedy. If the state fire marshal, deputy state fire marshal, or any officer mentioned in 50-62-101 finds in any building or premises subject to their inspection any combustible materials, inflammable conditions, or fire hazards dangerous to the safety of the building premises or to the public, such officer shall order such material, conditions, or hazards to be removed or remedied. Such order shall be in writing and directed generally to the owner, lessee, agent, or occupant of such building or premises.

History: En. Sec. 2753-D, Ch. 139, L. 1929; re-en. Sec. 2753.4, R.C.M. 1935; amd. Sec. 1, Ch. 187, L. 1947; R.C.M. 1947, 82-1223(part).

50-62-109. Failure to comply with order. Any such owner, lessee, agent, or occupant upon whom such notice shall be served who shall fail to comply therewith within 24 hours thereafter, unless the order prescribes a longer time within which it may be complied with, shall be guilty of a misdemeanor, and said material may be removed or dangerous condition corrected at the expense of the owner of such building or premises or at the expense of the person upon whom such service is so made, or both, and the said state fire marshal, deputy state fire marshal, or other officer mentioned in 50-62-101 may maintain all necessary actions for the recovery thereof.

History: En. Sec. 2753-D, Ch. 139, L. 1929; re-en. Sec. 2753.4, R.C.M. 1935; amd. Sec. 1, Ch. 187, L. 1947; R.C.M. 1947, 82-1223(part).

50-62-110. Appeal to state fire marshal. If the owner or occupant deems himself aggrieved by an order of an officer under this chapter, he may appeal to the state fire marshal within 24 hours and the cause of the complaint shall at once be investigated by direction of the state fire marshal. Unless such order is revoked by the state fire marshal, it shall remain in force and forthwith be complied with by such owner or occupant.

History: En. Sec. 17, Ch. 148, L. 1911; re-en. Sec. 2754, R.C.M. 1921; re-en. Sec. 2754, R.C.M. 1935; R.C.M. 1947, 82-1224.

50-62-111. Penalty for failure to comply with order to correct. An owner or occupant of buildings or premises who fails to comply with the orders of the authorities named in this chapter shall be fined not less than $10 or more than $50 for each day's neglect.

History: En. Sec. 18, Ch. 148, L. 1911; re-en. Sec. 2755, R.C.M. 1921; re-en. Sec. 2755, R.C.M. 1935; R.C.M. 1947, 82-1225.

CHAPTER 63

INVESTIGATION OF FIRES

Part 1 — General Provisions

Section
50-63-101. Examination of premises where fire occurred authorized.
50-63-102. Penalty for setting or leaving fire causing damage.
50-63-103. Liability of offender for damages and costs.

Part 2 — Initial Investigation

50-63-201. Cause of fire to be investigated.

50-63-202. Fire chief or sheriff to conduct investigation.
50-63-203. Reports to be filed with fire marshal.
50-63-204. Penalty for failure to investigate or file report.

Part 3 — Investigation by Fire Marshal

50-63-301. Further investigation by fire marshal.
50-63-302. Private investigation authorized.
50-63-303. Fire marshal authorized to compel testimony and production of evidence.
50-63-304. Procedure to compel testimony or production of evidence.
50-63-305. Fire marshal authorized to administer oaths.
50-63-306. Refusal to testify a misdemeanor.
50-63-307. Punishment for contempt — attendance of witnesses by attachment.
50-63-308. Arrest and prosecution of arsonist.

Part 4 — Information from Insurers

50-63-401. Insurer to provide information regarding fire loss to certain agencies upon request.
50-63-402. Insurer to report suspicious fires.
50-63-403. Agencies to keep information confidential.
50-63-404. Testimony of agency personnel in action to recover under insurance policy.
50-63-405. Exemption of insurer from liability.

Part 1

General Provisions

50-63-101. Examination of premises where fire occurred authorized. In the performance of the duties imposed by the provisions of this chapter, the state fire marshal and each of his subordinates at all times of day or night may enter upon and examine any building or premises where a fire has occurred and other buildings and premises adjoining or near thereto.

History: En. Sec. 14, Ch. 148, L. 1911; re-en. Sec. 2751, R.C.M. 1921; re-en. Sec. 2751, R.C.M. 1935; R.C.M. 1947, 82-1217.

50-63-102. Penalty for setting or leaving fire causing damage. (1) Any person who shall upon any land within this state set or leave any fire that shall spread and damage or destroy property of any kind not his own shall upon conviction be punished by a fine of not less than $10 or more than $500. If such fire be set maliciously, whether on his own or on another's land, with intent to destroy property not his own, he shall be guilty of a felony and shall be punished by imprisonment in the state penitentiary for not less than 1 or more than 50 years.

(2) During the closed season, any person who shall kindle a campfire on land not his own in or dangerously near any forest material and leave same unquenched or who shall be a party thereto or who shall by throwing away any lighted cigar, cigarette, matches, or by the use of firearms or in any other manner start a fire in forest material not his own and leave same unquenched shall, upon conviction, be fined not less than $10 or more than $100 or be imprisoned in the county jail not exceeding 60 days.

History: En. Sec. 4, Ch. 170, L. 1919; re-en. Sec. 2766, R.C.M. 1921; re-en. Sec. 2766, R.C.M. 1935; R.C.M. 1947, 82-1236.

50-63-103. Liability of offender for damages and costs. Any person who shall upon any land within this state, whether on his own or on another's land, set or leave any fire that shall spread and damage or destroy property of any kind not his own shall be liable for all damages caused thereby, and any owner of property damaged or destroyed by such fire may maintain a civil suit for the purpose of recovering such damages. Any person who shall upon any land within this state, whether on his own or on another's land, set or leave any fire which threatens to spread and damage or destroy property shall be liable for all costs and expenses incurred by the state of Montana, by any forestry association, or by any person extinguishing or preventing the spread of such fire.

History: En. Sec. 7, Ch. 170, L. 1919; re-en. Sec. 2769, R.C.M. 1921; re-en. Sec. 2769, R.C.M. 1935; R.C.M. 1947, 82-1237.

Part 2

Initial Investigation

50-63-201. Cause of fire to be investigated. The cause, origin, and circumstances of each fire by which property has been destroyed or damaged shall be investigated to determine the exact cause and circumstances. The state fire marshal may superintend and direct the investigation if he deems it necessary.

History: En. Sec. 6, Ch. 148, L. 1911; re-en. Sec. 2743, R.C.M. 1921; re-en. Sec. 2743, R.C.M. 1935; amd. Sec. 6, Ch. 229, L. 1967; amd. Sec. 1, Ch. 351, L. 1973; R.C.M. 1947, 82-1209(1).

50-63-202. Fire chief or sheriff to conduct investigation. If the fire occurs within a municipality or organized fire district, the chief of the fire department shall make the investigation. If the fire occurs outside a municipality or organized fire district, the county sheriff shall make the investigation.

History: En. Sec. 6, Ch. 148, L. 1911; re-en. Sec. 2743, R.C.M. 1921; re-en. Sec. 2743, R.C.M. 1935; amd. Sec. 6, Ch. 229, L. 1967; amd. Sec. 1, Ch. 351, L. 1973; R.C.M. 1947, 82-1209(part).

50-63-203. Reports to be filed with fire marshal. (1) If it appears that the fire was of suspicious origin or if there was a loss of human life, the official responsible for the investigation shall notify the state fire marshal within 24 hours and shall file a written report of the cause with the state fire marshal within 10 days.

(2) If the property was insured, as soon as any adjustment has been made, a person representing the insurance company shall notify the state fire marshal of the amount of adjustment and the apparent cause and circumstances of the fire on forms furnished by the state fire marshal.

(3) Each official responsible for investigating fires shall file a fire incident report on each and every fire with the state fire marshal. Reports shall be on forms and shall contain information prescribed by the state fire marshal. These reports shall be sent to the state fire marshal on a weekly basis.

History: En. Sec. 6, Ch. 148, L. 1911; re-en. Sec. 2743, R.C.M. 1921; re-en. Sec. 2743, R.C.M. 1935; amd. Sec. 6, Ch. 229, L. 1967; amd. Sec. 1, Ch. 351, L. 1973; R.C.M. 1947, 82-1209(part).

50-63-204. Penalty for failure to investigate or file report. Any person who fails to comply with the requirements of this part shall be fined not less than $25 or more than $200.

History: En. Sec. 8, Ch. 148, L. 1911; re-en. Sec. 2745, R.C.M. 1921; re-en. Sec. 2745, R.C.M. 1935; amd. Sec. 7, Ch. 229, L. 1967; R.C.M. 1947, 82-1211.

Part 3

Investigation by Fire Marshal

50-63-301. Further investigation by fire marshal. (1) If in his opinion further investigation is necessary, the state fire marshal or a deputy state fire marshal shall take or cause to be taken the testimony on oath of all persons supposed to be cognizant of any facts or to have means of knowledge in relation to the matter concerning which an examination is required by law to be made and cause such testimony to be reduced to writing.

(2) If the state fire marshal or a deputy fire marshal is notified by an officer or other person or knows of a violation of the laws of this state relating to fires, he shall immediately and diligently inquire into the facts of the violation.

History: (1)En. Sec. 9, Ch. 148, L. 1911; re-en. Sec. 2746, R.C.M. 1921; re-en. Sec. 2746, R.C.M. 1935; Sec. 82-1212, R.C.M. 1947; (2)En. Sec. 12, Ch. 148, L. 1911; amd. Sec. 1, Ch. 212, L. 1919; re-en. Sec. 2749, R.C.M. 1921; re-en. Sec. 2749, R.C.M. 1935; amd. Sec. 35, Ch. 187, L. 1977; Sec. 82-1215, R.C.M. 1947; R.C.M. 1947, 82-1212, 82-1215(part).

50-63-302. Private investigation authorized. Investigation by or under the direction of the state fire marshal may, in his discretion, be private. He may exclude from the place where such investigation is held all persons other than those required to be present, and witnesses may be kept separate from each other and not be allowed to communicate with each other until they have been examined.

History: En. Sec. 13, Ch. 148, L. 1911; re-en. Sec. 2750, R.C.M. 1921; re-en. Sec. 2750, R.C.M. 1935; R.C.M. 1947, 82-1216.

50-63-303. Fire marshal authorized to compel testimony and production of evidence. (1) The state fire marshal or deputy state fire marshal may summon and compel the attendance of witnesses before him to testify in relation to any matter which by law is a subject of inquiry and investigation and require the production of any book, paper, or document he deems pertinent.

(2) The state fire marshal or a deputy fire marshal is authorized to have a subpoena issued for a person he has reason to believe has information or knowledge concerning a violation of the laws relating to fires. The subpoena shall command the person to appear before a justice of the peace at the time and place designated in the subpoena to testify concerning a violation of the laws relating to fires.

History: (1)En. Sec. 11, Ch. 148, L. 1911; re-en. Sec. 2748, R.C.M. 1921; re-en. 2748, R.C.M. 1935; Sec. 82-1214, R.C.M. 1947; (2)En. Sec. 12, Ch. 148, L. 1911; amd. Sec. 1, Ch. 212, L. 1919; re-en. Sec. 2749, R.C.M. 1921; re-en. Sec. 2749, R.C.M. 1935; amd. Sec. 35, Ch. 187, L. 1977; Sec. 82-1215, R.C.M. 1947; R.C.M. 1947, 82-1214, 82-1215(part).

50-63-304. Procedure to compel testimony or production of evidence. (1) For the purpose of having a subpoena issued, the state fire marshal or deputy fire marshal may file with a justice of the peace a written statement signed by the state fire marshal or deputy fire marshal, alleging a violation of the laws of this state relating to fires, and naming the witness to be subpoenaed. The justice of the peace shall issue a subpoena for the witness named commanding him to appear before the justice of the peace at the time designated in the subpoena to testify concerning a violation of the laws relating to fires.

(2) The subpoena may be served by the sheriff or any peace officer of the county or by any other person who is a citizen of the county and shall be served and returned to the state fire marshal, deputy fire marshal, or justice of the peace in the same manner that subpoenas are served and returned when issued by justices of the peace.

(3) The witness shall be sworn to make true answers to all questions touching the matters under investigation propounded to him, and his testimony shall be reduced to writing and be signed by him.

History: En. Sec. 12, Ch. 148, L. 1911; amd. Sec. 1, Ch. 212, L. 1919; re-en. Sec. 2749, R.C.M. 1921; re-en. Sec. 2749, R.C.M. 1935; amd. Sec. 35, Ch. 187, L. 1977; R.C.M. 1947, 82-1215(part).

50-63-305. Fire marshal authorized to administer oaths. For the purpose of this chapter, the state fire marshal or a deputy fire marshal is authorized to administer an oath to a person appearing as a witness in a proceeding investigating a violation of the laws relating to fires. False swearing in such a proceeding is perjury and shall be punished as such.

History: En. Sec. 12, Ch. 148, L. 1911; amd. Sec. 1, Ch. 212, L. 1919; re-en. Sec. 2749, R.C.M. 1921; re-en. Sec. 2749, R.C.M. 1935; amd. Sec. 35, Ch. 187, L. 1977; R.C.M. 1947, 82-1215(part).

50-63-306. Refusal to testify a misdemeanor. Disobedience to a subpoena, refusal to be sworn as a witness or to sign the testimony given by a witness, or refusal to answer a proper question propounded to a witness is a misdemeanor, and a person convicted thereof shall be fined no more than $100 or be imprisoned in the county jail for any term not to exceed 90 days, or both.

History: En. Sec. 12, Ch. 148, L. 1911; amd. Sec. 1, Ch. 212, L. 1919; re-en. Sec. 2749, R.C.M. 1921; re-en. Sec. 2749, R.C.M. 1935; amd. Sec. 35, Ch. 187, L. 1977; R.C.M. 1947, 82-1215(part).

50-63-307. Punishment for contempt — attendance of witnesses by attachment. (1) A justice of the peace, when acting under the provisions of this chapter, may adjourn proceedings from time to time and punish a witness for contempt because of his refusal to be sworn, to answer questions as a witness, or to sign his testimony.

(2) The justice of the peace may compel the attendance of witnesses by attachment.

History: En. Sec. 12, Ch. 148, L. 1911; amd. Sec. 1, Ch. 212, L. 1919; re-en. Sec. 2749, R.C.M. 1921; re-en. Sec. 2749, R.C.M. 1935; amd. Sec. 35, Ch. 187, L. 1977; R.C.M. 1947, 82-1215(part).

50-63-308. Arrest and prosecution of arsonist. (1) If the state fire marshal or a deputy is of the opinion that there is evidence sufficient to charge a person with arson or a similar crime, he shall arrest him or cause him to be arrested and charged with such offense. He shall furnish the prosecuting attorney such evidence, with the names of witnesses and a copy of material testimony taken in the case.

(2) If the testimony so taken discloses the fact that an offense has been committed, the county attorney of the county in which the offense was committed shall prosecute the person committing the offense in the same manner as in other criminal cases.

History: **(1)En. Sec. 10, Ch. 148, L. 1911; re-en. Sec. 2747, R.C.M. 1921; re-en. Sec. 2747, R.C.M. 1935; Sec. 82-1213, R.C.M. 1947; (2)En. Sec. 12, Ch. 148, L. 1911; amd. Sec. 1, Ch. 212, L. 1919; re-en. Sec. 2749, R.C.M. 1921; re-en. Sec. 2749, R.C.M. 1935; amd. Sec. 35, Ch. 187, L. 1977; Sec. 82-1215, R.C.M. 1947; R.C.M. 1947, 82-1213, 82-1215(part).**

Part 4

Information from Insurers

50-63-401. Insurer to provide information regarding fire loss to certain agencies upon request. Each insurer engaged in issuing fire insurance policies in the state of Montana shall upon written request of any appropriate law enforcement or fire protection agency release to the requesting agency all information in its possession relating to a fire loss of real or personal property. The information may include but is not limited to:

(1) any insurance policy relevant to the fire loss under investigation and any application for such a policy;

(2) premium payment records;

(3) the history of previous claims made by the insured for fire loss;

(4) material relating to the investigation of the loss, including statements of any person, proof of loss, and other relevant evidence.

History: **En. Sec. 1, Ch. 145, L. 1979.**

50-63-402. Insurer to report suspicious fires. Whenever an insurer has reason to believe that a fire loss in which it has an interest may be of other than accidental cause, it shall notify an appropriate law enforcement or fire protection agency and provide such agency with all material developed from its inquiry into the fire loss.

History: **En. Sec. 2, Ch. 145, L. 1979.**

50-63-403. Agencies to keep information confidential. The insured's right of individual privacy requires agencies and agency personnel receiving information furnished pursuant to 50-63-401 and 50-63-402 to hold the information in confidence unless:

(1) the insured waives his right of individual privacy; or

(2) release of the information is required pursuant to a criminal or civil proceeding.

History: **En. Sec. 3, Ch. 145, L. 1979.**

50-63-404. Testimony of agency personnel in action to recover under insurance policy. Law enforcement and fire protection agency personnel may be required to testify as to any information in their possession regarding the fire loss of real or personal property in any civil action in which a person seeks recovery from an insurer under a policy for the fire loss.

History: **En. Sec. 4, Ch. 145, L. 1979.**

50-63-405. Exemption of insurer from liability. In the absence of fraud or bad faith, the insurer or person who furnished information on its behalf is not subject to liability in any civil action for:

(1) furnishing information as required by 50-63-401; or

(2) notifying an appropriate agency of a fire loss as required by 50-63-402.

History: En. Sec. 5, Ch. 145, L. 1979.

CHAPTER 64

ASBESTOS REGULATION IN BUILDING CONSTRUCTION AND DEMOLITION

Part 1 — General Provisions

Section
50-64-101. Purpose.
50-64-102. Definitions.
50-64-103. Rulemaking authorized.
50-64-104. Safeguards to follow during demolition.
50-64-105. Use of asbestos-containing spray products prohibited.
50-64-106. Use of fibrated product or compound — supervisory personnel required.
50-64-107. Violations — penalties.

Part 1

General Provisions

50-64-101. Purpose. The purpose of this chapter is to protect the citizens of Montana from the dangers precipitated by the use of spray materials containing mineral fibers. The legislature finds that if adequate safety precautions are not taken during the spray application of these materials, spraying operations may release a significant quantity of particulate matter into the ambient air. Likewise, the legislature finds the continued unregulated use of sprayed asbestos insulation and the destruction of structures containing asbestos insulation represent a significant threat to the health of workers placed in contact with these fibers and to the health of the community as a whole.

History: En. 69-7401 by Sec. 1, Ch. 570, L. 1977; R.C.M. 1947, 69-7401.

50-64-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Department" means the department of administration.

(2) "Fibrated product" means a substance used in construction for whatever purpose which contains asbestos fibers which tend to disperse into ambient air during application or upon destruction or removal.

(3) "Person" means an individual, firm, corporation, partnership, association, or other legal entity.

History: En. 69-7402 by Sec. 2, Ch. 570, L. 1977; R.C.M. 1947, 69-7402.

50-64-103. Rulemaking authorized. The department is granted authority to promulgate rules necessary to accomplish the purposes of this chapter.

History: En. 69-7406 by Sec. 6, Ch. 570, L. 1977; R.C.M. 1947, 69-7406.

50-64-104. Safeguards to follow during demolition. The building or structure to be demolished which contains asbestos insulation or fireproofing must follow the following safeguards:

(1) Whenever possible, the local fire department shall be notified of the demolition.

(2) Signs must be posted in conspicuous locations around the building or structure being demolished warning persons to take proper precautions against exposure to asbestos fibers before entering the area.

(3) Boilers, pipes, and steel members insulated or fireproofed with asbestos must be wetted before toppling of the wall begins. This mandatory procedure applies, where practicable, to all asbestos-lined surfaces.

(4) When demolition by toppling is performed, a reasonable enclosure for dust emission control must be constructed.

(5) Adequate wetting to suppress dust must be performed before and during the demolition or toppling.

(6) Asbestos-containing debris may not be dropped or thrown from any floor and must be transported by dust-tight chutes or buckets, with the chutes or buckets sufficiently wetted to prevent dust.

(7) During transportation of the debris, it must be thoroughly wetted before loading and must be enclosed or covered during its transport to prevent dust dispersion.

(8) The asbestos-containing debris must be deposited at a sanitary landfill at which it is unlikely to be disturbed, and signs must be posted around the landfill warning that asbestos-containing debris is buried there.

History: En. 69-7403 by Sec. 3, Ch. 570, L. 1977; R.C.M. 1947, 69-7403.

50-64-105. Use of asbestos-containing spray products prohibited. The use of asbestos-containing spray products, for whatever purpose, in the construction of a building or structure is prohibited.

History: En. 69-7404 by Sec. 4, Ch. 570, L. 1977; R.C.M. 1947, 69-7404.

50-64-106. Use of fibrated product or compound — supervisory personnel required. Whenever a fibrated product or compound is applied to a surface utilizing a spray or pneumatic means of application, one person must be assigned supervisory authority for all aspects of the operation.

History: En. 69-7405 by Sec. 5, Ch. 570, L. 1977; R.C.M. 1947, 69-7405.

50-64-107. Violations — penalties. (1) A person who violates any provision of this chapter commits a misdemeanor.

(2) A person convicted of violating this chapter shall be fined no more than $1,000 or be imprisoned in the county jail for a term not to exceed 60 days, or both.

(3) Each separate occurrence in violation of this chapter is a separate offense.

History: En. 69-7407 by Sec. 7, Ch. 570, L. 1977; R.C.M. 1947, 69-7407.

CHAPTERS 65 THROUGH 69

RESERVED

CHAPTER 70

OCCUPATIONAL HEALTH

Part 1 — General Provisions

Section
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Part 1

General Provisions

50-70-101. Short title. This chapter shall be known and may be cited as the "Occupational Health Act of Montana".
History: En. Sec. 1, Ch. 316, L. 1971; R.C.M. 1947, 69-4206.

50-70-102. Declaration of policy and purpose. (1) It is hereby declared to be the public policy of this state and the purpose of this chapter to achieve and maintain such conditions at the work place as will protect human health and safety and, to the greatest degree practicable, foster the comfort and convenience of the workers at any work place of this state and enhance their productivity and well-being.

(2) To these ends it is the purpose of this chapter to provide for a coordinated statewide program of abatement and control of occupational diseases, for an appropriate distribution of responsibilities among the state and local units of government, and for a framework within which all values may be balanced in the public interest.
History: En. Sec. 2, Ch. 316, L. 1971; R.C.M. 1947, 69-4207.

50-70-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Air contaminant" means fumes, dust, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.

(2) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

(3) "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

(4) "Emission" means a release into the work space atmosphere of air contaminants or pollutants.

(5) "Occupational disease" means an illness, impairment, or disability that:

(a) arises from the person's employment;

(b) is caused by exposure to a substance or industrial practice which is hazardous to health;

(c) has symptoms of an industrial disease which is known to have resulted from the same type of exposure in other cases;

(d) is not the result of a person's contact or activities outside his employment.

(6) "Occupational health" is a field of specialization concerned with the problems of health maintenance, productivity, and well-being of industrial workers which are related to and affected by the conditions of work and by the stress of the industrial environment.

(7) "Person" means an individual, partnership, firm, association, municipality, public or private corporation, subdivision or agency of the state, trust, estate, or any other legal entity.

(8) "Pollutant" means air contaminants, heat, noise, vibration, ionizing radiation, and nonionizing radiation.

(9) "Sanitary facilities" means toilets, showers, dressing rooms, lunch rooms, sewage disposal systems, and potable water systems.

(10) "Threshold limit values" means airborne concentrations of substances which, it is believed, nearly all workers may be repeatedly exposed to day after day without adverse effect.

(11) "Work place" is a place or location where a person is gainfully employed.

(12) "Worker" is a person gainfully employed at any place.

History: En. Sec. 3, Ch. 316, L. 1971; amd. Sec. 35, Ch. 349, L. 1974; R.C.M. 1947, 69-4208.

50-70-104. Administration. Except as otherwise provided, the department is responsible for administration of this chapter.

History: En. Sec. 4, Ch. 316, L. 1971; amd. Sec. 36, Ch. 349, L. 1974; R.C.M. 1947, 69-4209.

50-70-105. Duties of department. The department shall:

(1) enforce board orders by appropriate administrative and judicial proceedings;

(2) secure necessary scientific, technical, administrative, and operational service, including laboratory facilities, by contract or otherwise;

(3) prepare and develop a comprehensive plan for the prevention, abatement, and control of occupational disease;

(4) encourage voluntary cooperation by persons and affected groups to achieve the purpose of this chapter;

(5) encourage and conduct studies, investigations, and research relating to occupational diseases and their causes, effects, prevention, abatement, and control;

(6) determine by means of field studies and sampling the degree of health hazard at any work place in the state;

(7) collect and disseminate information and conduct educational and training programs relating to the prevention and control of occupational diseases;

(8) advise, consult, contract, and cooperate with other agencies of the state, local governments, industries, other states, interstate and interlocal agencies, the United States, and interested persons or groups;

(9) accept, receive, and administer grants or other funds or gifts from public or private agencies, including the United States, for the purpose of carrying out this chapter. Funds received by the department under this section shall be deposited in the state treasury to the account of the department.

History: En. 69-4211.1 by Sec. 38, Ch. 349, L. 1974; R.C.M. 1947, 69-4211.1.

50-70-106. Duties of board. The board shall:

(1) adopt, amend, and repeal rules implementing and consistent with this chapter;

(2) hold hearings relating to any aspect of or matter in the administration of this chapter at any place designated by the board;

(3) designate an attorney to assist in conducting hearings and appoint a reporter who shall be present at all hearings and take full stenographic notes of all proceedings thereat, transcripts of which will be available to the public at cost;

(4) issue orders necessary to carry out this chapter;

(5) require access to records relating to emissions;

(6) establish threshold limit values of airborne contaminants for the state as a whole.

History: En. Sec. 6, Ch. 316, L. 1971; amd. Sec. 37, Ch. 349, L. 1974; R.C.M. 1947, 69-4211(part).

50-70-107. Duty of physicians and others to report occupational disease. (1) Before the 11th day after discovery, every physician, person in charge of a hospital or clinic, or state employee shall report an occupational disease to the department.

(2) The report shall be on forms prescribed by the department and include:

(a) name and address of the diseased person;

(b) name and business address of the employer;

(c) business of the employer;

(d) place of the person's employment;

(e) length of time the person was employed at the place where he became ill;

(f) nature of the disease;

(g) other information required by the department.

(3) Reports made under this section are neither public records nor open to public inspection. They are not admissible as evidence in any legal action or at a hearing under workers' compensation laws of this state.

History: En. Sec. 22, Ch. 197, L. 1967; R.C.M. 1947, 69-4204.

50-70-108. Application for federal aid. The department may make application for, receive, administer, and expend any federal aid for the control of occupational diseases or the development and administration of industrial hygiene programs related to occupational disease control provided that any such application is first submitted to and approved by the board. The board shall approve any such application if it is consistent with this chapter and any other applicable requirements of law.

History: En. Sec. 15, Ch. 316, L. 1971; R.C.M. 1947, 69-4220.

50-70-109. Confidentiality of records. (1) Records or other information concerning pollutants or operations which are furnished to or obtained by the board or department and which, as certified by the owner or operator, relate to production or sales figures or to processes or production unique to the owner or operator or which would tend to affect adversely his competitive position are only for the confidential use of the board or department in the administration of this chapter unless the owner expressly agrees to their publication or availability to the general public.

(2) This section does not prevent the use of records or information by the board or department in compiling or publishing analyses or summaries relating to the general condition at the work place if the analyses or summaries do not identify an owner or operator or reveal information made otherwise confidential by this section.

History: En. Sec. 14, Ch. 316, L. 1971; amd. Sec. 43, Ch. 349, L. 1974; R.C.M. 1947, 69-4219.

50-70-110. Hearing officer. The board may designate the director of health and environmental sciences as the hearing officer at any hearing set by the board and authorize him to make rulings on evidence and conduct the hearing. The board or the director of health and environmental sciences as hearing officer may compel the attendance of witnesses and the production of evidence at hearings.

History: En. Sec. 6, Ch. 316, L. 1971; amd. Sec. 37, Ch. 349, L. 1974; R.C.M. 1947, 69-4211(part).

50-70-111. Hearings. (1) No rule, amendment, or repeal shall take effect except after public hearing on due notice. Such notice shall be given by public advertisement not less than 20 or more than 30 days prior to the date set for the hearing.

(2) Nothing in this section requires a hearing prior to the issuance of an emergency order pursuant to 50-70-117.

(3) (a) Any person aggrieved by any order of the board may apply for rehearing upon one or more of the following grounds and upon no other grounds:

(i) The board acted without or in excess of its powers.

(ii) The order was procured by fraud.

(iii) The order is contrary to the evidence.

(iv) The applicant has discovered new evidence material to him which he could not, with reasonable diligence, have discovered and produced at the hearing.

(v) Competent evidence was excluded to the prejudice of the applicant.

(b) The petition must be in such form and filed in such time as the board shall prescribe.

History: En. Sec. 13, Ch. 316, L. 1971; amd. Sec. 42, Ch. 349, L. 1974; R.C.M. 1947, 69-4218.

50-70-112. Permits. (1) The board may by rule prohibit the installation, alteration, or use of any machine, equipment, device, or other article which it finds may cause or contribute to occupational disease or which is intended primarily to prevent or control occupational disease, unless a permit has been obtained from it.

(2) The board may require that applications for permits shall be accompanied by plans, specifications, and such other information as it deems necessary.

(3) The board shall provide for the issuance, suspension, revocation, and renewal of permits which it may require pursuant to this section.

(4) If a permit is required, the board must decide within 90 days after receiving application whether or not the permit will issue. If no decision is rendered within that time, permission shall be deemed to have been denied.

History: En. Sec. 7, Ch. 316, L. 1971; R.C.M. 1947, 69-4212.

50-70-113. Emissions prohibited. (1) The board may establish the limitations of the levels, concentrations, or quantities of emissions of various pollutants from any source necessary to prevent, abate, or control occupational diseases. Except as otherwise provided in or pursuant to this section, such levels, concentrations, or quantities shall be controlled and no emissions in excess thereof shall be lawful. The board may also establish standards for sanitary facilities and lunchrooms.

(2) The board may by rule use any widely recognized measuring system for measuring emissions of pollutants.

(3) Should federal minimum standards of industrial hygiene or occupational health be set by federal law, the board may, if necessary, set more stringent standards by rule.

History: En. Sec. 9, Ch. 316, L. 1971; R.C.M. 1947, 69-4214.

50-70-114. Variances. (1) Any person who owns or is in control of any plant, building, structure process, or equipment may apply to the board for an exemption or partial exemption from rules governing the quality, nature, duration, or extent of emissions of pollutants. The application shall be accompanied by such information and data as the board may require.

(2) The board may grant the exemption or partial exemption if it finds that:

(a) the emissions occurring or proposed to occur do not constitute an immediate danger to the health and safety of the worker; and

(b) compliance with the rules from which exemption is sought would produce hardship without equal or greater benefits to the worker.

(3) No exemption or partial exemption may be granted pursuant to this section except after a public hearing on due notice and until the board has considered the relative interests of the applicant and the worker or workers involved.

(4) No exemption or partial exemption pursuant to this section may be granted for a period to exceed 1 year, but an exemption or partial exemption may be renewed for like periods if no complaint is made to the board on account thereof or if, after a complaint has been made and duly considered at a public hearing held by the board on due notice, the board finds that renewal is justified. No renewal may be granted except on application therefor. Application for renewal shall be made at least 60 days prior to the

expiration of the exemption or partial exemption. Immediately prior to application for renewal, the applicant shall give public notice of the application in accordance with the rules of the board. Any renewal pursuant to this subsection shall be on the same grounds and subject to the same limitations and requirements as provided in subsection (2)(a) of this section.

(5) An exemption, partial exemption, or renewal thereof is not a right of the applicant or holder but shall be in the discretion of the board.

(6) Nothing in this section and no exemption, partial exemption, or renewal granted may be construed to prevent or limit the application of the emergency provisions and procedures of 50-70-117 to any person or his property.

History: En. Sec. 12, Ch. 316, L. 1971; R.C.M. 1947, 69-4217; amd. Sec. 22, Ch. 37, L. 1979.

50-70-115. Inspection. (1) The department may enter and inspect at a reasonable time property, premises, or a place, except a private residence, where a person is or will be employed to ascertain the state of compliance with this chapter and rules adopted under it.

(2) A person may not refuse entry or access to the department when it requests entry for purposes of inspection. A person may not obstruct, hamper, or interfere with an inspection.

(3) At his request, the owner or operator of the premises shall receive a report setting forth facts found which relate to compliance status.

History: En. Sec. 8, Ch. 316, L. 1971; amd. Sec. 39, Ch. 349, L. 1974; R.C.M. 1947, 69-4213.

50-70-116. Enforcement. (1) When the department has reason to believe that a violation of this chapter or rule made under it has occurred, it may have written notice and the facts alleged to constitute a violation served on the alleged violator and may include an order to take necessary corrective action within a reasonable period of time stated in the order. An order becomes final unless, no later than 30 days after the date of notice is received, the person named requests in writing a hearing before the board. On receipt of a request, the board shall hold a hearing.

(2) If, after a hearing held under subsection (1) of this section, the board finds that a violation has occurred, it shall either affirm or modify an order previously issued or issue an appropriate order for the prevention, abatement, or control of the emissions involved or for the taking of other corrective action it considers appropriate. If, after hearing on an order contained in a notice, the board finds that no violation is occurring, it shall rescind the order. An order issued as part of a notice or after hearing may prescribe the date by which the violation shall cease and may prescribe time limits for particular action in preventing, abating, or controlling the pollutant.

(3) Instead of issuing the order provided for in subsection (1) of this section, the board may either:

(a) require that the alleged violator appear before it for a hearing at a time and place specified in a notice and answer the charges complained of; or

(b) initiate action under 50-70-118.

(4) This chapter does not prevent the board from making efforts to obtain voluntary compliance through warning, conference, or other appropriate means.

(5) In connection with a hearing held under this section, the board may, and on application by a party shall, compel the attendance of witnesses and the production of evidence on behalf of parties.

History: En. Sec. 10, Ch. 316, L. 1971; amd. Sec. 40, Ch. 349, L. 1974; R.C.M. 1947, 69-4215.

50-70-117. Emergency procedure. (1) Any other law to the contrary notwithstanding, if the department finds that a generalized hazard at a work place exists and that it creates an emergency requiring immediate action to protect human health, the department shall order persons causing or contributing to the hazard to reduce or discontinue immediately the emissions creating the hazard. Upon issuance of this order, the department shall fix a place and time, not later than 72 hours thereafter, for a hearing to be held before the board. Not more than 24 hours after the commencement of the hearing and without adjournment, the board shall affirm, modify, or set aside the order of the department.

(2) In the absence of a generalized condition as that referred to in subsection (1) of this section, if the department finds that emissions from an operation are causing imminent danger to human health, it may order the person responsible for the operation in question to reduce or discontinue emissions immediately without regard to 50-70-116. In this event, the requirements for hearing and affirmance, modification, or setting aside of orders provided in 50-70-116 apply.

(3) This section does not limit any power which the governor or any other officer may have to declare an emergency and act on the basis of the declaration, whether the power is conferred by statute, constitutional provisions, or inheres in the office.

History: En. Sec. 11, Ch. 316, L. 1971; amd. Sec. 41, Ch. 349, L. 1974; R.C.M. 1947, 69-4216.

50-70-118. Penalty. (1) A person who violates this chapter relating to limitations of levels, concentrations, or quantities of emissions of various pollutants from a source determined to be necessary to prevent, abate, or control occupational diseases (unless in compliance with this chapter) is guilty of an offense and subject to a fine not to exceed $1,000. Each day of violation constitutes a separate offense.

(2) Proceedings under this section are not a bar to enforcement of this chapter or of rules or orders made under it by injunction or other appropriate remedy. The department may institute and maintain in the name of the state these enforcement proceedings.

(3) This chapter does not abridge, limit, impair, create, enlarge, or otherwise affect substantively or procedurally the right of a person to damage or other relief on account of injury to persons or property and to maintain an action or other appropriate proceeding.

(4) Fines collected shall be deposited to the state general fund.

History: En. Sec. 16, Ch. 316, L. 1971; amd. Sec. 44, Ch. 349, L. 1974; R.C.M. 1947, 69-4221.

CHAPTER 71

OCCUPATIONAL SAFETY

Part 1 — General Provisions

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50-71-103. Public contractors subject to chapter.
50-71-104. Effect on existing structures and equipment.
50-71-105. Qualifications of safety bureau chief.
50-71-106. Administrative powers and duties of division.
50-71-107. General research and review powers of division.
50-71-108. Power to appoint advisers.
50-71-109. Duties of division regarding occupational health hazards.
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Part 1

General Provisions

50-71-101. Short title. This chapter may be cited as the "Montana Safety Act".

History: En. Sec. 1, Ch. 341, L. 1969; R.C.M. 1947, 41-1708.

50-71-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Amendment" means such modification or change in a code as shall be intended to be of universal or general application.

(2) "Code" means a standard body of rules for safety formulated, adopted, and issued by the division under the provisions of this chapter.

(3) "Division" means the division of workers' compensation of the department of labor and industry provided for in 2-15-1702.

(4) "Employee" and "worker" are defined as in 39-71-118.

(5) "Employer" is defined as in 39-71-117.

(6) "Variation" means a special, limited modification or change in the code which is applicable only to the particular place of employment of the employer or person petitioning for such modification or change.

History: **En. Sec. 2, Ch. 341, L. 1969; amd. Sec. 1, Ch. 182, L. 1975; R.C.M. 1946, 41-1709.**

50-71-103. Public contractors subject to chapter. Every contractor performing services for the state or any political subdivision thereof shall be required to comply with the safety rules, codes, and provisions of this chapter as a part of his contract.

History: **En. Sec. 24, Ch. 341, L. 1969; R.C.M. 1947, 41-1731.**

50-71-104. Effect on existing structures and equipment. Nothing contained in this chapter shall prevent the use of existing buildings, structures, and equipment during their lifetime when they are maintained in good condition, are properly safeguarded, and conform to the applicable safety standards required by Montana safety codes effective prior to July 1, 1969, provided that replacements and alterations shall conform to all provisions of this chapter.

History: **En. Sec. 25, Ch. 341, L. 1969; R.C.M. 1947, 41-1732.**

50-71-105. Qualifications of safety bureau chief. The safety bureau chief shall be a person with at least 2 years' experience or training in the field of industrial safety.

History: **En. Sec. 6, Ch. 341, L. 1969; amd. Sec. 2, Ch. 182, L. 1975; R.C.M. 1947, 41-1713(part).**

50-71-106. Administrative powers and duties of division. In the administration of this chapter, the division:

(1) is vested with full power and jurisdiction over and shall have such supervision of every employment and place of employment in this state as may be necessary to enforce and administer all laws and all lawful orders requiring such employment and places of employment to be safe and requiring the protection of the life and safety of every employee in such employment or place of employment;

(2) shall carry out the provisions of this chapter;

(3) may adopt and enforce all necessary and reasonable rules and provisions for the purpose of carrying this chapter into effect and in reference to the investigation of all violations of this chapter and fix and set the time and place for all hearings which may be necessary or expedient for the purpose of carrying the provisions of this chapter into effect;

(4) may on its own motion or at the request of others subpoena witnesses, administer oaths, take depositions, fix the fees and mileage of witnesses, and compel the attendance of witnesses and the production of papers, books, accounts, documents, and testimony in any inquiry, investigation, hearing, or proceeding in any part of this state, and the division shall provide for defraying the expenses thereof.

History: **En. Sec. 6, Ch. 341, L. 1969; amd. Sec. 2, Ch. 182, L. 1975; R.C.M. 1947, 41-1713(part).**

50-71-107. General research and review powers of division. The division may develop greater knowledge and interest in the causes and prevention of industrial accidents, occupational diseases, and related subjects through:

(1) research, conferences, lectures, and uses of public communications media;

(2) collection and dissemination of accident statistics; and

(3) development of staff competent in the review of safety codes.

History: En. Sec. 22, Ch. 341, L. 1969; amd. Sec. 18, Ch. 182, L. 1975; R.C.M. 1947, 41-1729(1).

50-71-108. Power to appoint advisers. The division may appoint advisers who shall be compensated by the division if necessary and who shall assist the division in establishing standards of safety. The division may adopt and incorporate in its orders such safety recommendations as it may receive from such advisers.

History: En. Sec. 22, Ch. 341, L. 1969; amd. Sec. 18, Ch. 182, L. 1975; R.C.M. 1947, 41-1729(2).

50-71-109. Duties of division regarding occupational health hazards. The division shall report occupational health hazards discovered in its investigations and inspection of places of employment to the department of health and environmental sciences and shall cooperate with the department in carrying out its duties as specified in chapter 70 of this title.

History: En. Sec. 26, Ch. 341, L. 1969; amd. Sec. 19, Ch. 182, L. 1975; R.C.M. 1947, 41-1733.

50-71-110. Violation of safety provision a misdemeanor. In addition to all other penalties herein provided, every employer, worker, or other person who either individually or acting as an officer, agent, or employee of a corporation or other person violates any safety provision of this chapter or who directly or indirectly knowingly induces another to do so is guilty of a misdemeanor.

History: En. Sec. 23, Ch. 341, L. 1969; R.C.M. 1947, 41-1730.

Part 2

Duties of Employer and Employee

50-71-201. Employer to furnish and require safety devices and practices. Every employer shall furnish a place of employment which is safe for employees therein and shall furnish and use and require the use of such safety devices and safeguards and shall adopt and use such practices, means, methods, operations, and processes as are reasonably adequate to render the place of employment safe and shall do every other thing reasonably necessary to protect the life and safety of employees.

History: En. Sec. 3, Ch. 341, L. 1969; R.C.M. 1947, 41-1710.

50-71-202. Employer to provide and maintain safe place of employment. (1) An employer who is the owner or lessee of any real property in this state shall not construct or cause to be constructed or maintained any place of employment that is unsafe.

(2) Every employer who is the owner of a place of employment or lessee thereof shall repair and maintain the same as to render it safe.

History: En. Sec. 4, Ch. 341, L. 1969; R.C.M. 1947, 41-1711.

50-71-203. Removal or refusal to use safety devices prohibited. No person shall remove, displace, damage, destroy, carry off, or refuse to use any safety device or safeguard furnished and provided for his use in any employment or place of employment or interfere in any way with the use thereof by any other person or interfere with the use of any method or process adopted for the protection of any employee in such employment or place of employment or fail to do any other thing reasonably necessary to protect the life and safety of such employees.

History: En. Sec. 5, Ch. 341, L. 1969; R.C.M. 1947, 41-1712.

Part 3

Safety Rules and Orders

50-71-301. Division's power to prescribe safety devices and fix and order safety standards. The division may, after hearing had upon its own motion or upon complaint, by safety orders, rules, or otherwise:

(1) declare and prescribe what safety devices, safeguards, or other means or methods of protection are well adapted to render the employees of every employment and place of employment safe as required by law;

(2) fix reasonable standards and prescribe, modify, and enforce such reasonable orders for the adoption, installation, use, maintenance, and operation of safety devices, safeguards, and other means or methods of protection to be as nearly uniform as possible as may be necessary to carry out all laws and lawful orders relative to the protection of the life and safety of the employees and places of employment;

(3) fix and order such reasonable standards for the construction, repair, and maintenance of places of employment and equipment as shall render them safe;

(4) require the performance of any other act which the protection of the life and safety of employees in employments and places of employment may demand.

History: En. Sec. 8, Ch. 341, L. 1969; amd. Sec. 4, Ch. 182, L. 1975; R.C.M. 1947, 41-1715.

50-71-302. Notice of hearing on rules and codes. Upon the fixing of a time and place for the holding of a public hearing for the purpose of considering and issuing rules and codes as authorized in this chapter, the division shall cause a notice of the hearing to be published in one or more daily newspapers of general circulation published in this state and in such other papers of general circulation in this state as the division may deem expedient. The notice shall contain a brief statement of the time, place, and purpose of the hearing. No defect or inaccuracy in the notice or in the publication thereof shall invalidate any rule or code issued or adopted by the division after the hearing.

History: En. Sec. 9, Ch. 341, L. 1969; amd. Sec. 5, Ch. 182, L. 1975; R.C.M. 1947, 41-1716.

50-71-303. Procedure to compel testimony or production of evidence. (1) The division or any member thereof before whom testimony is to be given or produced, in the case of refusal of any witness to attend or testify or produce any papers required by such subpoena, may in applying to the district court in and for the county in which the proceeding is pending show that the witness has been subpoenaed in the manner prescribed and the witness has failed or refused to attend or produce the papers required by the subpoena or has refused to answer questions propounded to him in the course of such proceeding and ask the court to compel the witness to attend and testify or produce such papers before the division.

(2) The court, upon such application, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court then and there to show cause why the witness has not attended and testified or produced the papers before the division or any member thereof.

(3) A copy of the order shall be served upon the witness.

(4) If it is apparent to the court that the subpoena was regularly issued by the division or member thereof, the court thereupon shall enter an order that the witness appear before the division or member thereof at a time and place to be fixed in such order and testify and produce the required papers, and upon failure to obey the order, the witness shall be dealt with as for contempt of court.

History: En. Sec. 7, Ch. 341, L. 1969; amd. Sec. 3, Ch. 182, L. 1975; R.C.M. 1947, 41-1714.

50-71-304 through 50-71-310 reserved.

50-71-311. Safety codes authorized. (1) The division may adopt, amend, repeal, and enforce rules for the prevention of accidents to be known as "safety codes" in every employment and place of employment, including the repair and maintenance of such places of employment, to render them safe.

(2) In the performance of its duties, the division may appoint advisory committees to deal with specified industries composed of equal numbers of employers and employees and others to suggest safety codes or amendments thereto.

History: En. Sec. 20, Ch. 341, L. 1969; amd. Sec. 16, Ch. 182, L. 1975; R.C.M. 1947, 41-1727(part).

50-71-312. Codes to be consistent with other safety codes. (1) All such safety codes and rules shall, when adopted, be not inconsistent with the then-existing widely accepted codes of such engineering bodies as the American society of mechanical engineers, the American standards association, the American society of safety engineers, the United States of America standards institute, the national fire protection association and, in addition, agencies of the federal government with responsibilities for administering worker safety programs and other accepted codes.

(2) Any amendments made to such codes by the division shall be such that, when amended, such code shall be consistent with the widely accepted safety codes as then existing.

History: En. Sec. 20, Ch. 341, L. 1969; amd. Sec. 16, Ch. 182, L. 1975; R.C.M. 1947, 41-1727(part).

50-71-313. Effective date of codes. All codes and all amendments thereto and repeals thereof shall take effect 30 days after certified copies thereof shall be filed in the office of the secretary of state.

History: En. Sec. 20, Ch. 341, L. 1969; amd. Sec. 16, Ch. 182, L. 1975; R.C.M. 1947, 41-1727(part).

50-71-314. Codes to be published. Every code adopted and every amendment or repeal thereof shall be published in such manner as the division may determine. A printed list of all titles of all codes including amendments thereof issued and adopted by the division under the provisions of this chapter, together with the dates of adoption thereof, shall be published from time to time.

History: En. Sec. 20, Ch. 341, L. 1969; amd. Sec. 16, Ch. 182, L. 1975; R.C.M. 1947, 41-1727(2).

50-71-315. Variations to code. (1) In case of practical difficulties, the division may grant variations from particular provisions of the code and permit the use of other or different devices or methods. However, such variations shall be granted only when it is clear that the reasonable safety of the workers in the plant or place of employment is not thereby endangered.

(2) In any case where the division shall decline or refuse to grant any request for variations on the ground that the safety of the workers involved would be endangered, the employer may request a rehearing as specified in this chapter.

(3) A properly indexed record of all variations made shall be kept in the office of the division and be open to public inspection.

History: En. Sec. 21, Ch. 341, L. 1969; amd. Sec. 17, Ch. 182, L. 1975; R.C.M. 1947, 41-1728(part).

50-71-316. Assistance in compliance. Any employer may consult with the division for advice and assistance in complying with the provisions of this chapter or any codes adopted hereunder.

History: En. Sec. 21, Ch. 341, L. 1969; amd. Sec. 17, Ch. 182, L. 1975; R.C.M. 1947, 41-1728(part).

50-71-317 through 50-71-320 reserved.

50-71-321. Periodic inspections. (1) The division shall inspect from time to time all the places of employment defined in the Montana Workers' Compensation Act as being hazardous and the machinery and appliances therein contained for the purpose of determining whether they conform to law.

(2) A report of such periodic inspection shall be filed in the office of the division and a copy thereof given the employer. Such report shall not be open to public inspection or made public except on order of the division or by the division in the course of a hearing or proceeding.

History: En. Sec. 18, Ch. 341, L. 1969; amd. Sec. 14, Ch. 182, L. 1975; R.C.M. 1947, 41-1725.

50-71-322. Procedure for worker to report safety violation. (1) A worker shall notify the worker's employer of any violation of law or regulation pertaining to safety of places of employment when the violation comes to the knowledge of the worker.

(2) If the employer fails to remedy the violation, the worker may complain in writing to the division of the violation.

(3) Upon receiving the complaint, the division shall forthwith inquire or make an inspection as to the safety of the place of employment. A copy of the report of inspection shall be given to the complainant.

History: En. Sec. 19, Ch. 341, L. 1969; amd. Sec. 15, Ch. 182, L. 1975; R.C.M. 1947, 41-1726.

50-71-323. Order directing additions, repairs, and improvements. (1) Whenever the division, after a hearing had upon its own motion or upon complaint, finds that an employment or place of employment is not safe or that the practices or methods or operations or processes employed or used in connection therewith are unsafe or do not afford adequate protection to the life and safety of the employees in such employments and place of employment, the division shall make and enter and serve such order relative thereto as may be necessary to render such employment or place of employment safe and protect the life and safety of employees in such employment and places of employment.

(2) The division may in the order direct that such additions, repairs, improvements, or changes be made and such safety devices and safeguards be furnished, provided, and used as are reasonably required to render such employment or places of employment safe in the manner and within the time specified in the order.

History: **En. Sec. 10, Ch. 341, L. 1969; amd. Sec. 6, Ch. 182, L. 1975; R.C.M. 1947, 41-1717.**

50-71-324. Time allowed for compliance with order. The division shall grant such time as may be reasonably necessary for compliance with any order, and any person affected by the order may petition the division for an extension of time, which the division shall grant if it finds the extension of time necessary.

History: **En. Sec. 12, Ch. 341, L. 1969; amd. Sec. 8, Ch. 182, L. 1975; R.C.M. 1947, 41-1719.**

50-71-325. Division authorized to prohibit further use of equipment constituting violation. (1) The division, upon finding any violation of any duly adopted safety code, order, or rule involving failure to install or maintain any safety appliance, device, or safeguard required by such safety order, code, or rule, may prohibit the further use of the machine, equipment, or apparatus constituting such violation and, when such use is prohibited, shall post notice in an appropriate place in plain view of any person likely to use the same calling attention to the unsafe condition, defect, or lack of safeguard and the fact that the further use thereof is prohibited.

(2) The notice required by subsection (1) of this section shall not be removed until the required safety appliance, device, or safeguard complies with the requirement of the safety order or safety code.

(3) Every person who, after the notice required by subsection (1) of this section is posted as provided in that subsection, uses or operates any place of employment, machine, device, apparatus, or equipment referred to in subsection (1) of this section before it is made safe and the required safeguards or safety appliances or devices are provided or who defaces or destroys or removes any notice required by subsection (1) of this section without the authority of the division or who fails or refuses to file a report of accident as required by 39-71-307(1) is guilty of a misdemeanor and, in addition to the punishment provided for misdemeanors, is subject to a civil penalty in an amount of not more than $1,000. This civil penalty may be imposed and collected by the division in an action brought in the name of the state in the county in which the employer resides or in which he employs workers. Any penalty collected under this subsection shall be paid into the division of workers' compensation earmarked revenue account.

(4) Any person aggrieved by an order prohibiting the use of the machine, equipment, apparatus, or place of employment as provided for in this section may request a hearing before the division within 20 days after entry of such order. The division shall then affirm, modify, or revoke the order, and all procedures of this chapter relative to entry of orders, rehearing, and appeal shall apply.

History: **En. Sec. 11, Ch. 341, L. 1969; amd. Sec. 7, Ch. 182, L. 1975; R.C.M. 1947, 41-1718(1) thru (4); amd. Sec. 23, Ch. 37, L. 1979.**

50-71-326. Injunction authorized. In addition to all other remedies provided in this chapter, the division may bring an action to enjoin any violation of any duly adopted safety order, code, or rule.

History: **En. Sec. 11, Ch. 341, L. 1969; amd. Sec. 7, Ch. 182, L. 1975; R.C.M. 1947, 41-1718(5).**

50-71-327. Division authorized to order closure or cessation of work. (1) The division may order any place of employment closed or the work therein to cease if it is found that the place of employment is in such an unsafe condition as to constitute an immediate menace to the life or safety of the workers employed therein. Any such order of closure or for cessation of work shall be expressly limited to only that portion of the plant, installation, or facility as is directly and immediately affected by the unsafe condition constituting an immediate menace to the life and safety of the workers employed therein.

(2) Upon issuance of any such order, the division shall fix a place and time not later than 24 hours thereafter for a hearing to be held before the division. Not more than 24 hours after the commencement of the hearing and without adjournment thereof, the division shall affirm, modify, or set aside the order.

(3) Nothing in this section shall empower the division to determine that any employment or place of employment is in an unsafe condition on the basis of the number or qualifications of employees operating such employment or place of employment unless a specific rule adopted after public hearing is violated. Provided that, for those employments or places of employment for which no code has been adopted and where it is found by the division that such place of employment is in such an unsafe condition as to constitute an immediate menace to the life or safety of the workers there employed, the division may order that portion of the plant, installation, or facility as is directly and immediately affected by such unsafe condition closed for a period not to exceed 4 hours unless such period be extended by order of the division.

History: **En. Sec. 13, Ch. 341, L. 1969; amd. Sec. 9, Ch. 182, L. 1975; R.C.M. 1947, 41-1720.**

50-71-328 through 50-71-330 reserved.

50-71-331. Right to apply for rehearing. Any party aggrieved directly or indirectly by any final order, decision, or rule of the division made or entered pursuant to this chapter may apply to the division, within 20 days after the order of the division, for rehearing in respect to any matters determined or covered by such final order, decision, or rule and specified in the application for hearing within the time and in the manner prescribed in this chapter.

History: **En. Sec. 15, Ch. 341, L. 1969; amd. Sec. 11, Ch. 182, L. 1975; R.C.M. 1947, 41-1722.**

50-71-332. Application for rehearing. (1) The application for rehearing shall set forth specifically and in full detail the grounds upon which the applicant considers the final order, decision, or rule is unjust or unlawful and every issue to be considered by the division.

(2) The applicant for rehearing shall be deemed to have finally waived all objections, irregularities, and illegalities concerning the matters upon which rehearing is sought other than those set forth in the application.

(3) A copy of the application for rehearing shall be served immediately on all adverse parties, who may file an answer thereto within 10 days after being served.

(4) If there are no adverse parties, the application may be heard ex parte or the division may require the application for rehearing to be served on such parties as may be designated by the division.

History: En. Sec. 16, Ch. 341, L. 1969; amd. Sec. 12, Ch. 182, L. 1975; R.C.M. 1947, 41-1723.

50-71-333. Disposition of application for rehearing. (1) Upon the filing of the application for rehearing, if the issues raised thereby have theretofore been adequately considered by the division, it may determine the same by confirming without hearing its previous determination or, if a rehearing is necessary to determine one or more of the issues raised, the division shall order a rehearing thereon and consider and determine the matters raised by such application.

(2) Notice of the time and place of the rehearing shall be given to the applicant, the adverse parties, and such other persons as the division may order.

(3) If, after the rehearing and the consideration of all the facts, including those arising since the making of the order or decision involved, the division shall be of the opinion that all or any part of the original order or decision is in any respect unjust or unwarranted or should be changed, the division shall abrogate, change, or modify the same.

(4) An order or decision made after the rehearing abrogating, changing, or modifying the original order or decision shall have the same force and effect as an original order or decision but shall not affect any right or the enforcement of any right arising from or by virtue of the original order or decision unless so ordered by the division.

(5) An application for rehearing is considered denied by the division unless it has been acted upon within 30 days from the date of filing; provided that the division may, upon good cause being shown therefor, extend the time within which it may act upon an application for rehearing for not exceeding an additional 30 days.

History: En. Sec. 17, Ch. 341, L. 1969; amd. Sec. 13, Ch. 182, L. 1975; R.C.M. 1947, 41-1724.

50-71-334. Judicial review. (1) The orders of the division, its rules, findings, and decisions made and entered under the provisions of this chapter may be reviewed by the courts within the time and in the manner specified in this section and not otherwise.

(2) Within 30 days after an application for rehearing is denied or, if the application is granted, within 30 days after rendition of the decision on the rehearing, any party affected thereby may appeal to the district court for the county in which is situated the place of employment complained of for the

purpose of having the lawfulness of the original order or decision or the order or decision on rehearing inquired into and determined.

(3) To give the district court jurisdiction, it is sufficient that a notice be filed with the clerk of the court to the effect that an appeal is taken to the district court from the order or decision of the division and describing the order or decision sufficiently for purposes of identification. The notice shall be signed by the party appealing or his attorney, and a copy thereof shall be served by certified mail upon the division.

(4) Within 10 days after the receipt of the notice, the division shall file with the clerk of court the record of proceedings before the division, including a transcript of all the evidence adduced upon the hearing and any rehearing before the division. The district court, on application for good cause shown, may extend the time within which the division shall file the record, transcript, and evidence.

(5) The cause shall be tried in the same manner as a civil action, provided that no new or additional evidence may be introduced in the court, but the cause shall be heard on the record to the court as certified to it by the division.

(6) The appeal shall not be extended further than to determine whether or not:

(a) the division acted without or in excess of its powers or in violation of the law;

(b) the order or decision was procured by fraud;

(c) the order, decision, or rule is unreasonable;

(d) if findings of fact are made, the finding of fact supports the order or decision under review.

(7) An appeal may be taken from the decree of the district court to the supreme court as in all other civil cases.

History: En. Sec. 14, Ch. 341, L. 1969; amd. Sec. 10, Ch. 182, L. 1975; R.C.M. 1947, 41-1721.

CHAPTER 72

SAFETY IN MINES OTHER THAN COAL MINES

Part 1 — General Provisions

Section

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Part 1

General Provisions

50-72-101. Applicability of chapter. This chapter shall apply to all mines (except coal and lignite) and individuals, owners, lessors, lessees, agents, partnerships, corporations, managers, operators, or employers operating any surface or underground metal or nonmetallic mines in this state. These individuals, owners, lessors, lessees, agents, partnerships, corporations, managers, operators, or employers operating any surface or underground metal or nonmetallic mines (excluding coal and lignite) shall report the same to the division, state the name of the mine, the location of the same, the name of the company, person, or persons owning or operating the same, post-office address, and number of persons employed.

History: En. Sec. 6, Ch. 98, L. 1903; re-en. Sec. 1720, Rev. C. 1907; re-en. Sec. 3425, R.C.M. 1921; re-en. Sec. 3425, R.C.M. 1935; amd. Sec. 3, Ch. 310, L. 1971; amd. Sec. 22, Ch. 182, L. 1975; R.C.M. 1947, 50-108.

50-72-102. Definitions. (1) "Authorized representative" means mine inspector or any other person employed or authorized by the division to perform any and all duties under this chapter.

(2) "Corporation" means a body formed and authorized by law to act as a single person although constituted by one or more persons and legally endowed with various rights and duties, including the capacity of succession.

(3) "Division" means the division of workers' compensation of the state of Montana.

(4) "Employee" means every person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as hereinafter defined, in or about any mine, mill, smelter, excavation, or quarry under any appointment or contract of hire, express or implied, oral or written, whether lawfully or unlawfully employed and whether the employment is casual or otherwise.

(5) "Employer" means every person, firm, partnership, corporation, or association, including an independent contractor, who has any person in service in or about any mine, mill, smelter, excavation, or quarry under any appointment or contract of hire, express or implied, oral or written.

(6) "Inspector" means a person employed by the division to inspect metallic and nonmetallic mines, mills, smelters, or quarries as provided in this chapter.

(7) "Mine" means any mine or excavation when clay, metallic ore, mineral, gypsum, or rock is dug or mined, whether on surface or underground, where metal-bearing ores or nonmetallic mineral commodities (exclusive of coal or lignite) are dug or mined whether at the surface or underground.

(8) "Notice" means a written notice, work order, or correction notice issued by an authorized representative of the division, which notice specifies

a violation and directs or recommends corrective measures and may specify a definite date or time in which to abate said violation.

(9) "Occupational health" means any of those health conditions that occur as a result of employment in a mine.

(10) "Order" means and includes any decision, rule, regulation, direction, requirement, or standard set, adopted, or issued by the division or any other determination or decision made by the division.

History: **En. 50-119 by Sec. 5, Ch. 310, L. 1971; amd. Sec. 24, Ch. 182, L. 1975; R.C.M. 1947, 50-119.**

50-72-103. Injunctions and other civil relief authorized. A civil action for preventive relief, including but not limited to an application for a permanent or temporary injunction, restraining order, or other order, may be instituted by the division in the district court for the county in which the mine in question is located or in which the mine operator has its principal office whenever an operator:

(1) violates or fails or refuses to comply with any order, rule, or regulation issued under this chapter;

(2) interferes with, hinders, or delays the division or its authorized representatives in carrying out any duties under this chapter;

(3) refuses to admit an authorized representative of the division to any mine which is subject to this chapter;

(4) refuses to permit the inspection or investigation of any mine which is subject to this chapter or an accident, injury, or occupational disease occurring in or connected with such a mine; or

(5) refuses to furnish the division any information or report requested by the division and which may reasonably be necessary to carry out the provisions of this chapter.

History: **En. Sec. 4, Ch. 72, L. 1911; re-en. Sec. 3435, R.C.M. 1921; re-en. Sec. 3435, R.C.M. 1935; amd. Sec. 4, Ch. 310, L. 1971; amd. Sec. 23, Ch. 182, L. 1975; R.C.M. 1947, 50-118(a).**

50-72-104. Violations a misdemeanor. (1) Any person who knowingly:

(a) violates or fails or refuses to comply with any order, rule, or regulation issued under this chapter;

(b) interferes with, hinders, or delays the division or its authorized representatives in carrying out any duties under this chapter;

(c) refuses to admit an authorized representative of the division to any mine which is subject to this chapter;

(d) refuses to permit the inspection or investigation of any mine which is subject to this chapter or an accident, injury, or occupational disease occurring in or connected with such a mine; or

(e) refuses to furnish the division any information or report requested by the division and which may reasonably be necessary to carry out the provisions of this chapter, shall be guilty of a misdemeanor and shall upon conviction thereof be punished for each such offense by a fine of not less than $100 or more than $3,000, by imprisonment in the county jail not exceeding 6 months, or both.

(2) In any instance in which such offense is committed by a corporation, any officer or authorized representative of such corporation who knowingly

permits such offense to be committed shall upon conviction be subject to the same fine or imprisonment, or both.

History: En. Sec. 4, Ch. 72, L. 1911; re-en. Sec. 3435, R.C.M. 1921; re-en. Sec. 3435, R.C.M. 1935; amd. Sec. 4, Ch. 310, L. 1971; amd. Sec. 23, Ch. 182, L. 1975; R.C.M. 1947, 50-118(b).

Part 2

Inspections and Investigations

50-72-201. Inspectors. The division of workers' compensation shall employ an adequate number of qualified metal and nonmetallic mine inspectors necessary for the enforcement of this chapter and shall prescribe their powers, duties, and responsibilities.

History: En. Sec. 1, p. 109, L. 1897; re-en. Sec. 1711, Rev. C. 1907; amd. Sec. 1, Ch. 71, L. 1909; amd. Sec. 1, Ch. 22, L. 1921; re-en. Sec. 3418, R.C.M. 1921; re-en. Sec. 3418, R.C.M. 1935; amd. Sec. 1, Ch. 310, L. 1971; amd. Sec. 20, Ch. 182, L. 1975; R.C.M. 1947, 50-101.

50-72-202. Inspections and investigations authorized. The division is authorized at any time to cause to be made such inspections and investigations as it shall deem necessary in surface and underground mines which are subject to this chapter:

(1) for the purpose of obtaining, utilizing, and disseminating information relating to health and safety conditions in such mines, the causes of accidents involving bodily injury or loss of life, or the causes of occupational diseases originating therein; and

(2) for the purpose of determining whether or not there is compliance with a health and safety standard or order issued under this chapter.

History: En. Sec. 1, Ch. 98, L. 1903; re-en. Sec. 1713, Rev. C. 1907; re-en. Sec. 3419, R.C.M. 1921; re-en. Sec. 3419, R.C.M. 1935; amd. Sec. 2, Ch. 310, L. 1971; amd. Sec. 21, Ch. 182, L. 1975; R.C.M. 1947, 50-102(a).

50-72-203. Inspectors and investigators to have free access to mines. For the purpose of making any inspection or investigation authorized by this chapter, authorized representatives of the division shall have the right of entry to, upon, or through any mine which is subject to this chapter.

History: En. Sec. 1, Ch. 98, L. 1903; re-en. Sec. 1713, Rev. C. 1907; re-en. Sec. 3419, R.C.M. 1921; re-en. Sec. 3419, R.C.M. 1935; amd. Sec. 2, Ch. 310, L. 1971; amd. Sec. 21, Ch. 182, L. 1975; R.C.M. 1947, 50-102(b).

50-72-204. Debarment of persons from mine when death or serious injury likely. If, upon any inspection of a mine which is subject to this chapter, authorized representatives of the division find that the conditions or practices in the mine are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated, such representatives shall determine the extent of the area of such mine throughout which the danger exists and thereupon issue an order requiring the operator of such mine to cause all persons to be withdrawn from and to be debarred from entering such area, except the persons designated below whose presence in such area is necessary to eliminate the danger described in such order:

(1) any person whose presence in such area is necessary in the judgment of the operator of the mine to eliminate the danger described in the order;

(2) any public official whose official duties require him to enter such area;

(3) any legal or technical consultant or any representative of the employees of the mine who is a person qualified to make mine examinations or is accompanied by such a person and whose presence in such area is necessary, in the judgment of the operator of the mine, for the proper investigation of the conditions described in the order.

History: En. Sec. 1, Ch. 98, L. 1903; re-en. Sec. 1713, Rev. C. 1907; re-en. Sec. 3419, R.C.M. 1921; re-en. Sec. 3419, R.C.M. 1935; amd. Sec. 2, Ch. 310, L. 1971; amd. Sec. 21, Ch. 182, L. 1975; R.C.M. 1947, 50-102(c).

50-72-205. Procedure when noncompliance not likely to cause death or serious injury. (1) If, upon any inspection or investigation, an authorized representative finds that there has been a failure to comply with a mandatory standard which is applicable to such mine, but that such failure to comply has not created a danger that could reasonably be expected to cause death or serious physical harm in such mine immediately or before the imminence of such danger can be eliminated, he shall find what would be a reasonable period of time within which such violation should be totally abated and thereupon issue a notice fixing a reasonable time for the abatement of the violation.

(2) If, upon the expiration of such period of time as originally fixed or extended, the authorized representative finds that such violation has not been totally abated and if he also finds that such period of time should not be further extended, he shall also find the extent of the area which is affected by such violation. Thereupon, the division shall make an order requiring the operator of such mine to cause all persons in such area to be withdrawn from and to be debarred from entering such area, excepting the following persons whose presence in such area is necessary to abate the violation described in the order:

(a) any person whose presence in such area is necessary in the judgment of the operator of the mine to abate the violation described in the order;

(b) any public official whose official duties require him to enter such area;

(c) any legal or technical consultant or any representative of the employees of the mine who is a person qualified to make examinations or is accompanied by such a person and whose presence in such area is necessary, in the judgment of the operator of the mine, for the proper investigation of the conditions described in the order.

History: En. Sec. 1, Ch. 98, L. 1903; re-en. Sec. 1713, Rev. C. 1907; re-en. Sec. 3419, R.C.M. 1921; re-en. Sec. 3419, R.C.M. 1935; amd. Sec. 2, Ch. 310, L. 1971; amd. Sec. 21, Ch. 182, L. 1975; R.C.M. 1947, 50-102(d).

50-72-206. Requirements as to findings, notices, and orders. (1) Findings and orders issued pursuant to this part shall contain a detailed description of the conditions or practices which cause and constitute a situation of imminent danger or a violation of a mandatory standard and a description of the area of the mine throughout which persons must be withdrawn and debarred.

(2) Each finding made and notice or order issued under this part shall be given promptly to the operator of the mine to which it pertains by the person

making such finding or order, and all such findings, orders, and notices shall be in writing and shall be signed by the person making them.

History: En. Sec. 1, Ch. 98, L. 1903; re-en. Sec. 1713, Rev. C. 1907; re-en. Sec. 3419, R.C.M. 1921; re-en. Sec. 3419, R.C.M. 1935; amd. Sec. 2, Ch. 310, L. 1971; amd. Sec. 21, Ch. 182, L. 1975; R.C.M. 1947, 50-102(part).

50-72-207. Notice or order subject to annulment, cancellation, or revision. A notice or order issued by an authorized representative pursuant to this part may be annulled, canceled, or revised by the authorized representative, and in case of a division order, the division may annul, cancel, or revise the order.

History: En. Sec. 1, Ch. 98, L. 1903; re-en. Sec. 1713, Rev. C. 1907; re-en. Sec. 3419, R.C.M. 1921; re-en. Sec. 3419, R.C.M. 1935; amd. Sec. 2, Ch. 310, L. 1971; amd. Sec. 21, Ch. 182, L. 1975; R.C.M. 1947, 50-102(part).

50-72-208. Order subject to review. The order of the duly authorized representative of the division shall remain in effect but shall immediately be subject to review as provided in this chapter.

History: En. Sec. 1, Ch. 98, L. 1903; re-en. Sec. 1713, Rev. C. 1907; re-en. Sec. 3419, R.C.M. 1921; re-en. Sec. 3419, R.C.M. 1935; amd. Sec. 2, Ch. 310, L. 1971; amd. Sec. 21, Ch. 182, L. 1975; R.C.M. 1947, 50-102(g).

50-72-209. Right to hearing. (1) An operator notified of an order made pursuant to 50-72-204 may apply to the division for a hearing, revision, or annulment of such order. Whenever the division after such a hearing, upon complaint or upon its own motion, finds that danger throughout the area of such mine as set out in such order existed at the time of making the inspection, it shall make an order denying a revision or annulment; but if it finds that such danger did not exist throughout the area of such mine, it shall make an order consistent with its findings revising or annulling the order under review.

(2) An operator notified of an order made pursuant to 50-72-205 may apply to the division for a hearing or revision of such order. If the division finds that there was no violation, it shall make an order annulling the order under review. If the division finds that there was such a violation, but such violation has since been abated, it shall make an order annulling the order under review. If the division finds that such violation was not totally abated, it shall make an order consistent with its findings.

History: En. Sec. 1, Ch. 98, L. 1903; re-en. Sec. 1713, Rev. C. 1907; re-en. Sec. 3419, R.C.M. 1921; re-en. Sec. 3419, R.C.M. 1935; amd. Sec. 2, Ch. 310, L. 1971; amd. Sec. 21, Ch. 182, L. 1975; R.C.M. 1947, 50-102(h), (i).

50-72-210. Actions or decisions under part to be taken as rapidly as possible. In view of the urgent need for prompt decisions of matters submitted to the division under this part, all actions which the division or its authorized representatives are required to take under this part shall be taken as rapidly as practical, consistent with adequate consideration of the issues involved.

History: En. Sec. 1, Ch. 98, L. 1903; re-en. Sec. 1713, Rev. C. 1907; re-en. Sec. 3419, R.C.M. 1921; re-en. Sec. 3419, R.C.M. 1935; amd. Sec. 2, Ch. 310, L. 1971; amd. Sec. 21, Ch. 182, L. 1975; R.C.M. 1947, 50-102(j).

CHAPTER 73

SAFETY IN COAL MINES

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Part 1

General Provisions

50-73-101. Short title. This chapter shall be known and may be cited as the "Montana Coal Mining Code".

History: En. Sec. 1, Ch. 120, L. 1911; re-en. Sec. 3447, R.C.M. 1921; re-en. Sec. 3447, R.C.M. 1935; amd. Sec. 1, Ch. 267, L. 1974; R.C.M. 1947, 50-401.

50-73-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Division" means the division of workers' compensation of the department of labor and industry provided for in 2-15-1702 and the state coal mine inspectors employed by the division.

(2) "Excavations" and "workings" mean all parts of a mine excavated or being excavated, including shafts, slopes, tunnels, entries, rooms, and working places, whether abandoned or in use.

(3) "Following shot" means a shot which is dependent in its action on the result of another shot.

(4) "Gassy mine" means a mine is considered to be potentially gassy. The division may further define this term in its rules.

(5) "Mine" and "coal mine" mean all parts of the property of a mining plant under one management which contribute, directly or indirectly, to the mining or handling of coal.

(6) "Mine examiner" means a person charged with the examination of the condition of the mine before the miners are permitted to enter it and who is commonly known as the "fire boss".

(7) "Mine foreman" means a person who is charged with the general direction of the underground work or both the underground work and the outside work of a coal mine and who is commonly known and designated as "mine boss".

(8) "Operator", as applied to the party in control of a mine under this chapter, means the person, firm, or body corporate which is the immediate proprietor as owner or lessee of the plant and, as such, is responsible for the condition and management thereof.

(9) "Shaft" means any vertical opening through the strata which is or may be used for the purpose of ventilation or escape or for hoisting or lowering of men or material in connection with the mining of coal.

(10) "Slope" and "drift" mean respectively an incline or horizontal way, opening, or tunnel to a seam of coal to be used for the same purpose as a shaft.

History: En. 50-401.1 by Sec. 2, Ch. 267, L. 1974; R.C.M. 1947, 50-401.1.

50-73-103. Division authorized to adopt rules. The division may adopt rules to carry out the provisions of this chapter and safety standards for all coal mines in this state.

History: En. 50-412.1 by Sec. 8, Ch. 267, L. 1974; R.C.M. 1947, 50-412.1.

50-73-104. Injunction and other civil relief authorized. A civil action for preventive relief, including but not limited to an application for a permanent or temporary injunction, restraining order, or other appropriate order, may be instituted by the division in the district court for the county in which the mine in question is located or in which the mine operator has its principal office when an operator:

(1) violates or fails or refuses to comply with an order, rule, or standard adopted under this chapter;

(2) interferes with, hinders, or delays the division or its authorized representatives in carrying out any duties under this chapter;

(3) refuses to admit an authorized representative of the division to a mine which is subject to this chapter;

(4) refuses to permit the inspection or investigation of a mine or an accident, injury, or occupational disease occurring in or connected with a mine; or

(5) refuses to furnish the division any information or report requested by the division and which may reasonably be necessary to carry out the provisions of this chapter.

History: En. Sec. 50-481 by Sec. 32, Ch. 267, L. 1974; R.C.M. 1947, 50-481(1).

50-73-105. Violations a misdemeanor. (1) A person who knowingly:

(a) violates or fails or refuses to comply with an order, rule, or standard adopted under this chapter;

(b) interferes with, hinders, or delays the division or its authorized representatives in carrying out any duties under this chapter;

(c) refuses to admit an authorized representative of the division to a mine;

(d) refuses to permit the inspection or investigation of a mine or an accident, injury, or occupational disease occurring in or connected with a mine; or

(e) refuses to furnish the division any information or report requested by the division and which may reasonably be necessary to carry out the provisions of this chapter is guilty of a misdemeanor and shall be punished for each offense by a fine of not less than $100 or more than $3,000, by imprisonment in the county jail not exceeding 6 months, or both.

(2) In an instance in which the offense is committed by a corporation, an officer or authorized representative of the corporation who knowingly permits the offense to be committed is subject to the same fine or imprisonment, or both.

History: En. Sec. 50-481 by Sec. 32, Ch. 267, L. 1974; R.C.M. 1947, 50-481(2).

Part 2

Maps, Surveys, and Boundary Lines

50-73-201. Operator to make map of coal mine. Every operator of every coal mine in this state shall make or cause to be made an accurate map or plan of the mines, drawn to a scale of not less than 200 feet to 1 inch and as much larger as practicable, on which shall appear the name of the state, county, and township in which the mine is located, the designation of the mine, the name of the company or owner, the certificate of the certified engineer or surveyor as to the accuracy and date of the survey, the north point, and the scale to which the drawing is made.

History: En. Sec. 37, Ch. 120, L. 1911; re-en. Sec. 3479, R.C.M. 1921; re-en. Sec. 3479, R.C.M. 1935; amd. Sec. 9, Ch. 267, L. 1974; R.C.M. 1947, 50-428.

50-73-202. Map of the surface. Every map or plan or, at the option of the operator, a separate map shall show the surface boundary lines contiguous to the workings and pertaining to each mine, all section or quarter-section lines and corners, town lots and streets, the tracts and side tracts of all railroads, the location of all wagon roads, rivers, streams, ponds, buildings, landmarks, and principal objects on the surface within the boundary lines; and in all cases, if of an underground mine, it shall be drawn on a transparency so that it can be laid upon the map of the underground workings and indicate the relative location of the lines and objects on the surface to the excavations of the mine.

History: En. Sec. 40, Ch. 120, L. 1911; re-en. Sec. 3482, R.C.M. 1921; re-en. Sec. 3482, R.C.M. 1935; amd. Sec. 12, Ch. 267, L. 1974; R.C.M. 1947, 50-431.

50-73-203. Map of underground working. For the underground working, the map shall show all power distribution and ventilation in mines and all shafts, slopes, tunnels, or other openings to the surface or to the workings of a contiguous mine; all excavations, entries, rooms, and crosscuts; the rise or dip of the seam from the bottom of the shaft, mouth of drift, or slope in either direction to the face of the workings; the location of the fan; the location of the permanent pumps, hauling engines, engine-planes, and fire walls; the location of any standing water which might prove a menace to life or danger to property from flood; and the line of any contiguous surface outcrop of the seam.

History: En. Sec. 38, Ch. 120, L. 1911; re-en. Sec. 3480, R.C.M. 1921; re-en. Sec. 3480, R.C.M. 1935; amd. Sec. 13, Ch. 185, L. 1949; amd. Sec. 10, Ch. 267, L. 1974; amd. Sec. 7, Ch. 39, L. 1977; R.C.M. 1947, 50-429.

50-73-204. Map for every seam. A separate and similar map for all active mining areas drawn to the same scale in all cases shall be made of every seam which shall be worked in any mine, and the maps of all seams shall show all shafts, drifts, tunnels, incline planes, or other passageways connecting them.

History: En. Sec. 39, Ch. 120, L. 1911; re-en. Sec. 3481, R.C.M. 1921; re-en. Sec. 3481, R.C.M. 1935; amd. Sec. 11, Ch. 267, L. 1974; R.C.M. 1947, 50-430.

50-73-205. Copies of maps for division. The original or true copies of all maps shall be kept in the office at the mine, and true copies shall also be furnished the division within 30 days after their completion. The maps delivered to the division shall become the property of the state. They shall be kept at the office of the division and be open to inspection by all persons interested in them. An examination shall only be made in the presence of a division inspector, and he shall not permit any copies of them to be made without the written consent of the operator or owner of the property, under penalty of removal from office.

History: En. Sec. 41, Ch. 120, L. 1911; re-en. Sec. 3483, R.C.M. 1921; re-en. Sec. 3483, R.C.M. 1935; amd. Sec. 13, Ch. 267, L. 1974; R.C.M. 1947, 50-432.

50-73-206. Maps to be updated on basis of semiannual surveys. An extension of the last preceding survey of every mine in active operation shall be made once every 6 months, and the result of the survey, with the date, shall be promptly and accurately entered upon the original maps so as to show all changes in plan or new work in the mine and all extensions of the workings to the most advanced boundary of the workings which have been made since the preceding survey. The changes and extensions shall be entered on the copies of the maps of the division or new copies furnished it within 30 days after the last survey is made.

History: En. Sec. 42, Ch. 120, L. 1911; re-en. Sec. 3484, R.C.M. 1921; re-en. Sec. 3484, R.C.M. 1935; amd. Sec. 14, Ch. 185, L. 1949; amd. Sec. 14, Ch. 267, L. 1974; R.C.M. 1947, 50-433(part).

50-73-207. Annual surveys in mines having only five men on shift. The division shall require an extension of the last preceding survey once every 12 months of every mine in active operation in which five men or less are employed on any one shift.

History: En. Sec. 42, Ch. 120, L. 1911; re-en. Sec. 3484, R.C.M. 1921; re-en. Sec. 3484, R.C.M. 1935; amd. Sec. 14, Ch. 185, L. 1949; amd. Sec. 14, Ch. 267, L. 1974; R.C.M. 1947, 50-433(2).

50-73-208. Final survey and map update when mine abandoned or worked out. (1) When a coal mine is worked out, is about to be abandoned, or indefinitely closed, the operator shall make or cause to be made a final survey of all available parts of the mine, and the results shall be duly extended on all maps and copies of the mine to show all excavations and the most advanced workings of the mine and their exact relations to the boundary or section lines on the surface.

(2) The division may order a survey to be made of the workings of a mine which is about to be abandoned or of which it has reason to believe the maps are inaccurate whenever in its judgment the safety of the workers, the support of the surface, the conservation of the property, or the safety of an adjoining mine requires it. The survey shall be at the expense of the state.

History: En. Sec. 43, Ch. 120, L. 1911; re-en. Sec. 3485, R.C.M. 1921; re-en. Sec. 3485, R.C.M. 1935; amd. Sec. 15, Ch. 267, L. 1974; R.C.M. 1947, 50-434.

50-73-209. Procedure when operator fails to furnish or update map. When the operator of a mine neglects or refuses or for any cause not satisfactory to the division fails for a period of 3 months to furnish the division the map or plan of the mine or of the extension or a copy, the division may make or cause to be made an accurate map or plan of the mine at the expense of the owner or lessee, and the cost may be recovered from the owner, lessee, or operator in the same manner as other debts by suit in the name of the state.

History: En. Sec. 42, Ch. 120, L. 1911; re-en. Sec. 3484, R.C.M. 1921; re-en. Sec. 3484, R.C.M. 1935; amd. Sec. 14, Ch. 185, L. 1949; amd. Sec. 14, Ch. 267, L. 1974; R.C.M. 1947, 50-433(part).

50-73-210. Restrictions as to boundary lines. In no case shall the workings of a coal mine be driven nearer than 50 feet to the boundary line of the coal rights pertaining to the mine, except for the purpose of establishing connecting workings between properties owned by the same person or an underground communication between contiguous mines as provided for elsewhere in rules adopted by the division.

History: En. 50-434.1 by Sec. 16, Ch. 267, L. 1974; R.C.M. 1947, 50-434.1.

Part 3

Duties of Operator and Employees in Mine Operation

50-73-301. Operator to report amount of coal produced. Within 15 days after the close of each calendar month, the operator of a coal mine shall report to the division the tons of coal produced each day during the preceding month.

History: En. 50-477 by Sec. 20, Ch. 267, L. 1974; R.C.M. 1947, 50-477(part).

50-73-302. Hoisting — licensing of hoisting engineers. Hoisting of personnel and licensing of hoisting engineers shall be performed in mines under the provisions of the law and rules and standards adopted by the division.

History: En. 50-479 by Sec. 22, Ch. 267, L. 1974; R.C.M. 1947, 50-479.

50-73-303. Nonpermissible internal-combustion engines. Nonpermissible internal-combustion engines or other machinery which gives off noxious fumes may not be permitted underground in any coal mine.

History: En. 50-567.1 by Sec. 17, Ch. 267, L. 1974; R.C.M. 1947, 50-467.1.

50-73-304. Owner to provide and maintain airways. The owner, lessee, or operator of every coal mine shall provide and maintain airways of sufficient dimensions, and in no case shall the area of the aircourse be less than 25 square feet in mines operated in any underground system.

History: En. Sec. 69, Ch. 120, L. 1911; re-en. Sec. 3511, R.C.M. 1921; re-en. Sec. 3511, R.C.M. 1935; amd. Sec. 18, Ch. 267, L. 1974; R.C.M. 1947, 50-468.

50-73-305. Specific prohibitions and safety precautions. (1) A person may not enter a mine which is generating firedamp in great enough quantities to be detected by a safety lamp until the mine examiners make a report to the division.

(2) A person, unless accompanied by the mine examiner, may not go beyond a danger signal until all standing gas discovered has been removed or diluted and rendered harmless by a current of air. A person ordered to withdraw by the mine foreman or mine examiner from the mine on account of the interruption of the ventilation may not reenter the mine until given permission to do so by the mine foreman.

(3) A person other than the mine examiner may not remove any caution board or danger signal placed at the entrance to any working place or at the entrance to any old workings in a mine.

(4) A person may not erase or change a mark of reference or monument made in connection with a measurement, change marks or dates on any caution board, erase or change the dates at room or entry face when made by the mine examiner, take for his use a life check not issued to him under rules adopted by the division, change the checks on cars, wrongfully check a car, or do any act with intent to defraud.

(5) A person may not take anything containing fire into an underground mine, except as provided for in rules adopted by the division.

(6) A person may not place refuse in or obstruct an airway or breakthrough used as an airway. A worker or other person may not damage or alter a water gauge, barometer, aircourse, brattice equipment, machinery, or livestock, obstruct or throw open any airway, handle or disturb any part of the machinery of the hoisting engine of a mine, open a door of a mine and neglect to close it, endanger the miners or those working therein, disobey an order given in pursuance of law, or do a willful act endangering the lives or health of persons working there or the security of a mine or machinery.

History: En. 50-476 by Sec. 19, Ch. 267, L. 1974; amd. Sec. 8, Ch. 39, L. 1977; R.C.M. 1947, 50-476.

50-73-306. Operator to give notice of happening of certain occurrences. Immediate notice must be conveyed to the division by the operator interested:

(1) when an accident occurs whereby a person receives serious or fatal injury;

(2) when work is commenced to sink a shaft, slope, or drift either for hoisting or escape purposes;

(3) when there is intent to abandon a mine or to reopen an abandoned mine;

(4) upon the appearance of a large body of firedamp in a mine, whether accompanied by explosion or not, and upon the occurrence of a serious fire within the mine or on the surface around the mine;

(5) when the workings of a mine are approaching near an abandoned mine believed to contain accumulation of water or gas; or

(6) upon the accidental closing or intended abandonment of a regularly established passageway to an escape outlet.

History: En. 50-477 by Sec. 20, Ch. 267, L. 1974; R.C.M. 1947, 50-477(part).

50-73-307. Operator to make and preserve a record of all injuries. Every operator of a coal mine or his agent shall make and preserve for the information of the division, upon uniform blanks furnished by the division, a record of all injuries sustained by any employees on the premises.

History: En. 50-478 by Sec. 21, Ch. 267, L. 1974; R.C.M. 1947, 50-478(part).

50-73-308. Operator to notify miners' organization of mine fatality. The operator shall, upon being notified of a fatality in a coal mine, relay that information promptly to the district office of the miners' organization.

History: En. 50-478 by Sec. 21, Ch. 267, L. 1974; R.C.M. 1947, 50-478(part).

Part 4

Inspections, Investigations, and Compliance

50-73-401. Coal mine inspector. (1) The division shall appoint state coal mine inspectors for the enforcement of this chapter.

(2) A person is not eligible to be a state coal mine inspector unless he is a citizen of the United States, a resident of this state, has been actually employed in coal mining 5 years before his appointment, and holds a mine foreman's certificate and a mine inspector's certificate from this state.

(3) A state coal mine inspector may not act as agent for a corporation, superintendent, or manager of a mine and shall in no manner be in the employ of mining companies, nor shall he be interested in any way in coal mining operations, either as owner, lessee, or otherwise.

History: (1)En. Sec. 2, Ch. 120, L. 1911; amd. Sec. 1, Ch. 20, L. 1921; re-en. Sec. 3448, R.C.M. 1921; re-en. Sec. 3448, R.C.M. 1935; amd. Sec. 3, Ch. 267, L. 1974; Sec. 50-402, R.C.M. 1947; (2)En. Sec. 3, Ch. 120, L. 1911; re-en. Sec. 3449, R.C.M. 1921; re-en. Sec. 3449, R.C.M. 1935; amd. Sec. 1, Ch. 185, L. 1949; amd. Sec. 4, Ch. 267, L. 1974; Sec. 50-403, R.C.M. 1947; (3)En. Sec. 6, Ch. 120, L. 1911; re-en. Sec. 3451, R.C.M. 1921; re-en. Sec. 3451, R.C.M. 1935; amd. Sec. 6, Ch. 267, L. 1974; Sec. 50-405, R.C.M. 1947; R.C.M. 1947, 50-402, 50-403, 50-405.

50-73-402. Division authorized to enter and inspect coal mines. (1) The division may enter, inspect, and examine any coal mine or any shaft, drift, or slope in the process of sinking for the purpose of mining coal in this state and the workings and the machinery belonging thereto at all reasonable times either by day or night, but not so as to impede or obstruct the workings of the mine.

(2) The division may at any time perform such inspections and investigations as it considers necessary in surface and underground mines which are subject to this chapter for the purpose of obtaining, utilizing, and disseminating information relating to health and safety conditions in the mines, the causes of accidents involving bodily injury or loss of life, or the causes of occupational diseases originating therein and for the purpose of determining whether there is compliance with a health and safety standard or order issued under this chapter.

(3) For the purpose of making an inspection or investigation authorized by this chapter, representatives of the division may enter, upon or through, any mine which is subject to this chapter.

History: (1)En. Sec. 5, Ch. 120, L. 1911; re-en. Sec. 3450, R.C.M. 1921; re-en. Sec. 3450, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1941; amd. Sec. 1, Ch. 38, L. 1945; amd. Sec. 2, Ch. 185, L. 1949; amd. Sec. 5, Ch. 267, L. 1974; Sec. 50-404, R.C.M. 1947; (2), (3)En. 50-480, 50-480.1 by Secs. 23, 24, Ch. 267, L. 1974; Secs. 50-480, 50-480.1, R.C.M. 1947; R.C.M. 1947, 50-404(1), 50-480, 50-480.1.

50-73-403. Division to give notice of inspection to be made on complaint. If the division has in its possession any complaint to the effect that this chapter is being violated, it shall notify the employer and the employees that it is about to make an inspection.

History: En. Sec. 5, Ch. 120, L. 1911; re-en. Sec. 3450, R.C.M. 1921; re-en. Sec. 3450, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1941; amd. Sec. 1, Ch. 38, L. 1945; amd. Sec. 2, Ch. 185, L. 1949; amd. Sec. 5, Ch. 267, L. 1974; R.C.M. 1947, 50-404(part).

50-73-404. Right of employees' representative and mine owner to accompany division during inspection. The employees' representative has the right to accompany the division in making an official mine inspection. The owner or operator has the right to personally accompany the division while inspecting his property or to designate someone to accompany the division.

History: En. Sec. 5, Ch. 120, L. 1911; re-en. Sec. 3450, R.C.M. 1921; re-en. Sec. 3450, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1941; amd. Sec. 1, Ch. 38, L. 1945; amd. Sec. 2, Ch. 185, L. 1949; amd. Sec. 5, Ch. 267, L. 1974; R.C.M. 1947, 50-404(part).

50-73-405. Mine owner to furnish means necessary for inspection. The owner, lessee, operator, superintendent, or mining boss of the mine is required to furnish the means necessary for the entry, inspection, examination, inquiry, and exit.

History: En. Sec. 5, Ch. 120, L. 1911; re-en. Sec. 3450, R.C.M. 1921; re-en. Sec. 3450, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1941; amd. Sec. 1, Ch. 38, L. 1945; amd. Sec. 2, Ch. 185, L. 1949; amd. Sec. 5, Ch. 267, L. 1974; R.C.M. 1947, 50-404(part).

50-73-406. Minimum inspection intervals. The division shall carefully examine all the coal mines in operation in this state at least every 3 months and more often if necessary to see that every precaution is taken to insure the safety of all workers that may be engaged in the coal mine. The division shall make a record of the visit, noting the time and the material circumstances of the inspection.

History: En. Sec. 5, Ch. 120, L. 1911; re-en. Sec. 3450, R.C.M. 1921; re-en. Sec. 3450, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1941; amd. Sec. 1, Ch. 38, L. 1945; amd. Sec. 2, Ch. 185, L. 1949; amd. Sec. 5, Ch. 267, L. 1974; R.C.M. 1947, 50-404(part).

50-73-407. Division to give notice of violations and penalties therefor. The division shall immediately notify the owner, lessee, superintendent, or mining boss of the discovery of any violation of the mining laws of this state and the penalty thereby imposed for those violations.

History: En. Sec. 5, Ch. 120, L. 1911; re-en. Sec. 3450, R.C.M. 1921; re-en. Sec. 3450, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1941; amd. Sec. 1, Ch. 38, L. 1945; amd. Sec. 2, Ch. 185, L. 1949; amd. Sec. 5, Ch. 267, L. 1974; R.C.M. 1947, 50-404(part).

50-73-408. Procedure when notice of violations disregarded. (1) If the notice provided for in 50-73-407 is disregarded, the division may stop immediately the working and operation of any mine or any part thereof where any dangerous or unlawful conditions are found.

(2) However, where conditions justify the division in so doing, it may grant a reasonable length of time for making repairs or for putting the mine in proper condition, but the number of workers employed in the mine or in the section of the mine involved shall be limited to those necessary to correct the unsafe condition.

(3) Where any stops or cessation of work is enforced, the division may thereafter allow the mine or part of a mine to be reopened when the dangerous or unlawful conditions existing there are removed or remedied so that they no longer exist.

History: En. Sec. 5, Ch. 120, L. 1911; re-en. Sec. 3450, R.C.M. 1921; re-en. Sec. 3450, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1941; amd. Sec. 1, Ch. 38, L. 1945; amd. Sec. 2, Ch. 185, L. 1949; amd. Sec. 5, Ch. 267, L. 1974; R.C.M. 1947, 50-404(part).

50-73-409. Division to post statement of conditions at some conspicuous location. The division shall post in some conspicuous location at each mine visited and inspected by it a plain statement of the conditions of the mine showing what in its judgment is necessary for the better protection of the lives and health of persons employed in the mine. The statement, signed by the division inspector, shall give the date of inspection. Where a local union has jurisdiction over the mine inspected, the division shall post three copies of the statement of conditions within 1 week after making the inspection. It shall also post a copy at the landing used by the workers stating what number of workers may be permitted to ride on the cage, car, or cars at one time.

History: En. Sec. 8, Ch. 120, L. 1911; re-en. Sec. 3453, R.C.M. 1921; re-en. Sec. 3453, R.C.M. 1935; amd. Sec. 3, Ch. 38, L. 1945; amd. Sec. 3, Ch. 185, L. 1949; amd. Sec. 7, Ch. 267, L. 1974; R.C.M. 1947, 50-407.

50-73-410. Division inspection upon advisement of accident, injury, or fatality. (1) When advised by an operator of any accident in a coal mine involving loss of life or serious personal injury, the division shall, if it considers it necessary from the facts reported and in all cases of loss of life, immediately have an inspector go to the scene of the accident within 48 hours of notification.

(2) The division may also make any original or supplementary investigation which it considers necessary as to the nature and cause of an accident and shall make a record of the circumstances and of the result of the investigations for its files.

(3) The inspection team shall include a division coal mine inspector, the employer or his designee, and a representative of the employees.

History: En. 50-478 by Sec. 21, Ch. 267, L. 1974; R.C.M. 1947, 50-478(part).

50-73-411. Miners' organization authorized to investigate fatal accident. The representative of the miners' organization or some person delegated by him may enter any coal mine for the purpose of investigating the causes of a fatal accident.

History: En. 50-478 by Sec. 21, Ch. 267, L. 1974; R.C.M. 1947, 50-478(part).

50-73-412. Debarment of persons from mine when death or serious injury likely. If, upon an inspection of a mine, the division finds that the conditions or practices in the mine are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the danger can be eliminated, the division shall determine the extent of the area of the mine throughout which the danger exists and order the operator of the mine to have all persons withdrawn from and excluded from entering the area, except the persons designated below whose presence in the area is necessary to eliminate the danger described in the order:

(1) a person whose presence in the area is necessary in the judgment of the operator of the mine to eliminate the danger;

(2) a public official whose official duties require him to enter the area;

(3) a legal or technical consultant or a representative of the employees of the mine who is a person qualified to make mine examinations or is accompanied by such a person and whose presence in the area is necessary, in the judgment of the operator of the mine, for the proper investigation of the conditions in the area.

History: En. 50-480.2 by Sec. 25, Ch. 267, L. 1974; R.C.M. 1947, 50-480.2.

50-73-413. Procedure when noncompliance not likely to cause death or serious injury. If upon an inspection or investigation the division finds that there has been a failure to comply with a mandatory standard which is applicable to the mine, but that the failure to comply has not created a danger that could reasonably be expected to cause death or serious physical harm in the mine immediately or before the imminence of the danger can be eliminated, it shall determine what would be a reasonable period of time within which the violation should be totally abated and issue a notice fixing a reasonable time for the abatement of the violation. If, upon the expiration of the period of time as originally fixed or extended, the division finds that the violation has not been totally abated and if it also finds that the period of time should not be further extended, it shall also find the extent of the area which is affected by the violation. The division shall order the operator of the mine to have all persons in the area to be withdrawn from and excluded from entering the area, excepting the following persons whose presence in the area is necessary to abate the violation described in the order:

(1) a person whose presence in the area is necessary in the judgment of the operator of the mine to abate the violation;

(2) a public official whose official duties require him to enter the area;

(3) a legal or technical consultant or a representative of the employees of the mine who is a person qualified to make examinations or is accompanied by such a person and whose presence in the area is necessary, in the judgment of the operator of the mine, for the proper investigation of the conditions in the area.

History: En. 50-480.3 by Sec. 26, Ch. 267, L. 1974; R.C.M. 1947, 50-480.3.

50-73-414. Requirements as to findings, notices, and orders. (1) Findings and orders issued under this chapter shall contain a detailed description of the conditions or practices which cause and constitute a situation of imminent danger or a violation of a mandatory standard and a description of the area of the mine throughout which persons must be withdrawn and excluded.

(2) Each finding made and notice or order issued by the division shall be given promptly to the operator of the mine to which it pertains, and all the findings, orders, and notices shall be in writing and shall be signed by the division inspector making them.

History: En. 50-484.4 by Sec. 27, Ch. 267, L. 1974; R.C.M. 1947, 50-480.4(part).

50-73-415. Notice or order subject to annulment, cancellation, or revision. A notice or order issued by the division under this chapter may be amended, canceled, or revised by the division.

History: En. 50-484.4 by Sec. 27, Ch. 267, L. 1974; R.C.M. 1947, 50-480.4(part).

50-73-416. Order subject to review. The order of the division shall remain in effect but shall immediately be subject to review as provided in this chapter.

History: En. 50-480.5 by Sec. 28, Ch. 267, L. 1974; R.C.M. 1947, 50-480.5.

50-73-417. Right to hearing. (1) An operator notified of an order made under 50-73-412 may apply to the division for a hearing, revision, or amendment of the order. When the division after a hearing upon complaint or upon its own motion finds that danger throughout the area of the mine as set out in the order existed at the time of making the inspection, it shall make an order denying a revision or amendment. However, if it finds that the danger did not exist throughout the area of the mine, it shall make an order consistent with its findings, revising or amending the order under review.

(2) An operator notified of an order made under 50-73-413, as amended, may apply to the division for a hearing or revision of the order. If the division finds that there was no violation, it shall make an order rescinding the order under review. If the division finds that there was a violation but the violation has since been abated, it shall make an order rescinding the order under review. If the division finds that the violation was not totally abated, it shall make an order consistent with its findings.

History: (1)En. 50-480.6 by Sec. 29, Ch. 267, L. 1974; Sec. 50-480.6, R.C.M. 1947; (2)En. 50-480.7 by Sec. 30, Ch. 267, L. 1974; amd. Sec. 9, Ch. 39, L. 1977; amd. Sec. 5, Ch. 187, L. 1977; Sec. 50-480.7, R.C.M. 1947; R.C.M. 1947, 50-480.6, 50-480.7.

50-73-418. Actions or decisions under chapter to be taken as rapidly as possible. In view of the urgent need for prompt decisions of matters submitted to the division under this chapter, all actions which the division is required to take under this chapter shall be taken as rapidly as practicable, consistent with adequate consideration of the issues involved.

History: En. 50-480.8 by Sec. 31, Ch. 267, L. 1974; R.C.M. 1947, 50-480.8.

CHAPTER 74

BOILERS AND STEAM ENGINES

Part 1 — General Provisions

Section

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Part 1

General Provisions

50-74-101. Division to formulate rules. The division of workers' compensation shall formulate definitions and rules for the safe construction, installation, operation, inspection, and repair of equipment covered by this chapter. The definitions and rules so formulated shall follow generally accepted nationwide engineering standards as published by the American society of mechanical engineers.

History: En. Sec. 550, Pol. C. 1895; re-en. Sec. 1639, Rev. C. 1907; amd. Sec. 1, Ch. 30, L. 1913; amd. Sec. 1, Ch. 12, L. 1921; re-en. Sec. 2712, R.C.M. 1921; re-en. Sec. 2712, R.C.M. 1935; amd. Sec. 1, Ch. 77, L. 1967; amd. Sec. 1, Ch. 225, L. 1971; amd. Sec. 25, Ch. 182, L. 1975; amd. Sec. 1, Ch. 152, L. 1977; R.C.M. 1947, 69-1501(1).

50-74-102. Boilers to conform to rules. No boiler which does not conform to the rules adopted by the division governing new construction and installation shall be installed and operated in this state after 12 months from the date upon which the first rules under this chapter pertaining to new construction and installation shall have become effective unless the boiler is of special design or construction, is not covered by the rules, or is in any way inconsistent with such rules, in which case a special installation and operating permit may be granted by the division at its discretion.

History: En. Sec. 554, Pol. C. 1895; re-en. Sec. 1643, Rev. C. 1907; amd. Sec. 5, Ch. 30, L. 1913; amd. Sec. 1, Ch. 32, L. 1919, re-en. Sec. 2714, R.C.M. 1921; re-en. Sec. 2714, R.C.M. 1935; amd. Sec. 2, Ch. 77, L. 1967; amd. Sec. 3, Ch. 225, L. 1971; amd. Sec. 26, Ch. 182, L. 1975; R.C.M. 1947, 69-1503(3).

50-74-103. Boilers exempted. (1) This chapter shall not apply to boilers under federal control.

(2) The provisions of this chapter requiring inspections, inspection fees, and certificates shall not apply to steam heating boilers operated at not over 15 pounds per square inch gauge pressure in private residences or apartments of six or less families or to hot water heating or supply boilers operated at not over 50 pounds per square inch gauge pressure and temperatures not over 250 degrees F when in private residences or apartments of six or less families.

(3) No persons operating any of the engines or boilers exempted from the operation of this chapter shall be required to procure a license from the division.

History: En. Sec. 5, Ch. 32, L. 1905; re-en. Sec. 1655, Rev. C. 1907; amd. Sec. 13, Ch. 30, L. 1913; amd. Sec. 4, Ch. 32, L. 1919; re-en. Sec. 2726, R.C.M. 1921; amd. Sec. 1, Ch. 140, L. 1923; re-en. Sec. 2726, R.C.M. 1935; amd. Sec. 4, Ch. 77, L. 1967; amd. Sec. 14, Ch. 225, L. 1971; amd. Sec. 33, Ch. 182, L. 1975; R.C.M. 1947, 69-1515(part).

50-74-104. Dinkey engines to be classed as traction engines. Locomotives, commonly known as dinkey engines, used in operating logging or mining railroads or any similar work where such locomotives are owned, leased, or operated by any individual, company, or corporation and are used in the business of such individual, company, or corporation and not for general commercial purposes shall be classed as traction engines and be subject to inspection as are other traction engines, and the persons operating or firing such dinkey locomotives shall be required to hold traction licenses.

History: **En. Sec. 5, Ch. 32, L. 1905; re-en. Sec. 1655, Rev. C. 1907; amd. Sec. 13, Ch. 30, L. 1913; amd. Sec. 4, Ch. 32, L. 1919; re-en. Sec. 2726, R.C.M. 1921; amd. Sec. 1, Ch. 140, L. 1923; re-en. Sec. 2726, R.C.M. 1935; amd. Sec. 4, Ch. 77, L. 1967; amd. Sec. 14, Ch. 225, L. 1971; amd. Sec. 33, Ch. 182, L. 1975; R.C.M. 1947, 69-1515(part).**

50-74-105. Purchaser to notify division of purchase. (1) Any person purchasing any boiler, whether traction or stationary, not exempted by the provisions of 50-74-103 shall, within 10 days after such purchase, report the fact of such purchase to the division and shall notify the division as to where the boiler will be installed and operated.

(2) Any person failing to comply with the provisions of this section shall be deemed guilty of a misdemeanor.

History: **En. Sec. 5, Ch. 32, L. 1905; re-en. Sec. 1655, Rev. C. 1907; amd. Sec. 13, Ch. 30, L. 1913; amd. Sec. 4, Ch. 32, L. 1919; re-en. Sec. 2726, R.C.M. 1921; amd. Sec. 1, Ch. 140, L. 1923; re-en. Sec. 2726, R.C.M. 1935; amd. Sec. 4, Ch. 77, L. 1967; amd. Sec. 14, Ch. 225, L. 1971; amd. Sec. 33, Ch. 182, L. 1975; R.C.M. 1947, 69-1515(part).**

50-74-106. Certificate and license to be conspicuously displayed. All certificates of inspection, operating certificates, and engineer's licenses must be displayed in a conspicuous place in the boiler room.

History: **En. Sec. 562, Pol. C. 1895; re-en. Sec. 1651, Rev. C. 1907; amd. Sec. 11, Ch. 30, L. 1913; re-en. Sec. 2722, R.C.M. 1921; re-en. Sec. 2722, R.C.M. 1935; amd. Sec. 10, Ch. 225, L. 1971; amd. Sec. 20, Ch. 513, L. 1973; R.C.M. 1947, 69-1511(part).**

50-74-107. Wrongful certification or granting of a license a misdemeanor. Any inspector or assistant inspector who willfully certifies regarding any boilers or their attachments or grants a license to any person to act as engineer contrary to the provisions of this chapter is guilty of a misdemeanor.

History: **En. Sec. 562, Pol. C. 1895; re-en. Sec. 1651, Rev. C. 1907; amd. Sec. 11, Ch. 30, L. 1913; re-en. Sec. 2722, R.C.M. 1921; re-en. Sec. 2722, R.C.M. 1935; amd. Sec. 10, Ch. 225, L. 1971; amd. Sec. 20, Ch. 513, L. 1973; R.C.M. 1947, 69-1511(part).**

50-74-108. Tampering with safety valve a misdemeanor. A renter, user, or owner of a boiler or a person who tampers with the safety valve to allow the boiler to carry greater pressure than is allowed by the inspection certificate is guilty of a misdemeanor.

History: **En. Sec. 555, Pol. C. 1895; re-en. Sec. 1644, Rev. C. 1907; amd. Sec. 6, Ch. 30, L. 1913; re-en. Sec. 2715, R.C.M. 1921; re-en. Sec. 2715, R.C.M. 1935; amd. Sec. 4, Ch. 225, L. 1971; amd. Sec. 9, Ch. 187, L. 1977; R.C.M. 1947, 69-1504(2).**

Part 2

Inspections

50-74-201. State boiler inspectors. The division shall appoint state inspectors of boilers and shall prescribe their duties and term of office and fix their compensation.

History: **En. Sec. 550, Pol. C. 1895; re-en. Sec. 1639, Rev. C. 1907; amd. Sec. 1, Ch. 30, L. 1913; amd. Sec. 1, Ch. 12, L. 1921; re-en. Sec. 2712, R.C.M. 1921; re-en. Sec. 2712, R.C.M. 1935; amd.**

Sec. 1, Ch. 77, L. 1967; amd. Sec. 1, Ch. 225, L. 1971; amd. Sec. 25, Ch. 182, L. 1975; amd. Sec. 1, Ch. 152, L. 1977; R.C.M. 1947, 69-1501(2).

50-74-202. Special boiler inspectors. (1) In addition to the state boiler inspectors, the division shall issue to the inspectors of boiler insurance companies authorized to do business in the state commissions, certificates, or other recognition as special boiler inspectors and may accept the inspection reports of such special inspectors as equivalent to those of the state inspectors.

(2) Each such special inspector shall hold a certificate as boiler inspector issued by the national board of boiler and pressure vessels inspectors.

(3) Such special inspectors shall receive no salary or expenses from the state, nor shall the state collect inspection fees for inspections made by such special inspectors.

History: En. Sec. 550, Pol. C. 1895; re-en. Sec. 1639, Rev. C. 1907; amd. Sec. 1, Ch. 30, L. 1913; amd. Sec. 1, Ch. 12, L. 1921; re-en. Sec. 2712, R.C.M. 1921; re-en. Sec. 2712, R.C.M. 1935; amd. Sec. 1, Ch. 77, L. 1967; amd. Sec. 1, Ch. 225, L. 1971; amd. Sec. 25, Ch. 182, L. 1975; amd. Sec. 1, Ch. 152, L. 1977; R.C.M. 1947, 69-1501(3).

50-74-203. Qualifications of boiler inspectors. No person is eligible to hold the office of inspector of boilers and steam engines who has not had at least 10 years of actual experience in the operation of steam engines, steam boilers, and steam machinery and who has not held for at least 3 years immediately preceding his appointment a first-class stationary engineer's license of the state of Montana or who is directly or indirectly interested in the manufacture or sale of boilers or steam machinery or any patented article required to be sold relating thereto.

History: En. Sec. 2, p. 102, L. 1889; amd. Sec. 551, Pol. C. 1895; re-en. Sec. 1640, Rev. C. 1907; amd. Sec. 2, Ch. 30, L. 1913; re-en. Sec. 2713, R.C.M. 1921; amd. Sec. 2, Ch. 225, L. 1971; R.C.M. 1947, 69-1502.

50-74-204. Joint or separate inspection authorized — inspectors to certify inspection under seal. In making an inspection of the boilers and machinery herein provided for, the inspectors may act jointly or separately, but the inspector or assistant inspector making such inspection must in all cases certify the same under the seal of the inspector of boilers and safety.

History: En. Sec. 562, Pol. C. 1895; re-en. Sec. 1651, Rev. C. 1907; amd. Sec. 11, Ch. 30, L. 1913; re-en. Sec. 2722, R.C.M. 1921; re-en. Sec. 2722, R.C.M. 1935; amd. Sec. 10, Ch. 225, L. 1971; amd. Sec. 20, Ch. 513, L. 1973; R.C.M. 1947, 69-1511(part).

50-74-205. Purchaser to receive certificate of inspection. (1) Any person purchasing any boiler, whether traction or stationary, shall be entitled to receive from the seller the certificates of inspection issued on such boiler.

(2) Any person failing to comply with the provisions of this section shall be deemed guilty of a misdemeanor.

History: En. Sec. 5, Ch. 32, L. 1905; re-en. Sec. 1655, Rev. C. 1907; amd. Sec. 13, Ch. 30, L. 1913; amd. Sec. 4, Ch. 32, L. 1919; re-en. Sec. 2726, R.C.M. 1921; amd. Sec. 1, Ch. 140, L. 1923; re-en. Sec. 2726, R.C.M. 1935; amd. Sec. 4, Ch. 77, L. 1967; amd. Sec. 14, Ch. 225, L. 1971; amd. Sec. 33, Ch. 182, L. 1975; R.C.M. 1947, 69-1515(part).

50-74-206. Boiler to be inspected prior to use — duty of notification. (1) The inspector of boilers must inspect all boilers and steam generators before the same are used.

(2) All persons who bring into this state for operation in this state any boiler or boilers must notify the division stating the number and kind of boilers and where they are to be located and operated in this state and must secure from the division a certificate of inspection before boilers are placed in operation except in the case of new boilers, which must be inspected within 90 days after they are put in use.

History: En. Sec. 554, Pol. C. 1895; re-en. Sec. 1643, Rev. C. 1907; amd. Sec. 5, Ch. 30, L. 1913; amd. Sec. 1, Ch. 32, L. 1919; re-en. Sec. 2714, R.C.M. 1921; re-en. Sec. 2714, R.C.M. 1935; amd. Sec. 2, Ch. 77, L. 1967; amd. Sec. 3, Ch. 225, L. 1971; amd. Sec. 26, Ch. 182, L. 1975; R.C.M. 1947, 69-1503(part).

50-74-207. Boiler opened for repair subject to inspection — duty of notification. Any owner, operator, or user who opens a boiler or boilers between inspections for repair or other reasons must notify the division of such action, and such boiler or boilers shall at the discretion of the division be inspected by the state or special boiler inspector before the boiler or boilers may be placed back in operation.

History: En. Sec. 554, Pol. C. 1895; re-en. Sec. 1643, Rev. C. 1907; amd. Sec. 5, Ch. 30, L. 1913; amd. Sec. 1, Ch. 32, L. 1919; re-en. Sec. 2714, R.C.M. 1921; re-en. Sec. 2714, R.C.M. 1935; amd. Sec. 2, Ch. 77, L. 1967; amd. Sec. 3, Ch. 225, L. 1971; amd. Sec. 26, Ch. 182, L. 1975; R.C.M. 1947, 69-1503(part).

50-74-208. Penalty for operation without certificate or failure to give notice. Any person failing to give notice to the division as provided in 50-74-206 or 50-74-207 or who operates such boilers without a certificate from the division shall be punished by a fine of not less than $100 or more than $500 for each offense, by imprisonment in the county jail for not less than 30 or more than 90 days, or by both such fine and imprisonment.

History: En. Sec. 554, Pol. C. 1895; re-en. Sec. 1643, Rev. C. 1907; amd. Sec. 5, Ch. 30, L. 1913; amd. Sec. 1, Ch. 32, L. 1919; re-en. Sec. 2714, R.C.M. 1921; re-en. Sec. 2714, R.C.M. 1935; amd. Sec. 2, Ch. 77, L. 1967; amd. Sec. 3, Ch. 225, L. 1971; amd. Sec. 26, Ch. 182, L. 1975; R.C.M. 1947, 69-1503(part).

50-74-209. Required inspection intervals. (1) All boilers must be inspected at least once in every year except boilers exempt under provisions of 50-74-103. Upon written application, longer inspection intervals may be authorized by the division.

(2) In addition to the annual inspection, it is the duty of the inspectors to examine at proper times, when in their opinion such examination is necessary, all such boilers as shall have become unsafe from any cause and to notify the owner or the person using such boilers of any defect and what repairs are necessary to render them safe.

History: (1)En. Sec. 554, Pol. C. 1895; re-en. Sec. 1643, Rev. C. 1907; amd. Sec. 5, Ch. 30, L. 1913; amd. Sec. 1, Ch. 32, L. 1919; re-en. Sec. 2714, R.C.M. 1921; re-en. Sec. 2714, R.C.M. 1935; amd. Sec. 2, Ch. 77, L. 1967; amd. Sec. 3, Ch. 225, L. 1971; amd. Sec. 26, Ch. 182, L. 1975; Sec. 69-1503, R.C.M. 1947; (2)En. Sec. 557, Pol. C. 1895; re-en. Sec. 1646, Rev. C. 1907; re-en. Sec. 2717, R.C.M. 1921; re-en. Sec. 2717, R.C.M. 1935; Sec. 69-1506, R.C.M. 1947; R.C.M. 1947, 69-1503(part), 69-1506.

50-74-210. Duty to permit inspection. It is the duty of the owners, engineers, or managers of steam or water boilers to allow the inspector free access to the same.

History: En. Sec. 558, Pol. C. 1895; re-en. Sec. 1647, Rev. C. 1907; amd. Sec. 7, Ch. 30, L. 1913; re-en. Sec. 2718, R.C.M. 1921; re-en. Sec. 2718, R.C.M. 1935; amd. Sec. 6, Ch. 225, L. 1971; amd. Sec. 27, Ch. 182, L. 1975; R.C.M. 1947, 69-1507(part).

50-74-211. Inspector to notify division of refused access. In case the owner, operators, or manager of any boiler is notified by the inspector to have the boiler ready for inspection on a certain day and fails to have such boiler ready for inspection at such time, the inspector shall notify the division to gain access to the boiler.

History: En. Sec. 558, Pol. C. 1895; re-en. Sec. 1647, Rev. C. 1907; amd. Sec. 7, Ch. 30, L. 1913; re-en. Sec. 2718, R.C.M. 1921; re-en. Sec. 2718, R.C.M. 1935; amd. Sec. 6, Ch. 225, L. 1971; amd. Sec. 27, Ch. 182, L. 1975; R.C.M. 1947, 69-1507(part).

50-74-212. Payment of costs resulting from refused access. The owner, engineer, or manager of any boiler who has refused access resulting in a division order must pay all transportation and hotel expenses of the inspector who makes the inspection directed by such order in addition to the inspection fee provided by law.

History: En. Sec. 558, Pol. C. 1895; re-en. Sec. 1647, Rev. C. 1907; amd. Sec. 7, Ch. 30, L. 1913; re-en. Sec. 2718, R.C.M. 1921; re-en. Sec. 2718, R.C.M. 1935; amd. Sec. 6, Ch. 225, L. 1971; amd. Sec. 27, Ch. 182, L. 1975; R.C.M. 1947, 69-1507(part).

50-74-213. Failure to comply with division directed access a misdemeanor. Any person failing to immediately comply with division directed access to the boiler shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $100 or more than $500, by imprisonment in the county jail for not less than 2 months or more than 6 months, or by both such fine and imprisonment.

History: En. Sec. 558, Pol. C. 1895; re-en. Sec. 1647, Rev. C. 1907; amd. Sec. 7, Ch. 30, L. 1913; re-en. Sec. 2718, R.C.M. 1921; re-en. Sec. 2718, R.C.M. 1935; amd. Sec. 6, Ch. 225, L. 1971; amd. Sec. 27, Ch. 182, L. 1975; R.C.M. 1947, 69-1507(part).

50-74-214. Engineer to assist in inspection. It shall be the duty of the engineer operating any boiler or boilers to assist the inspectors in their examination of the same and point out any defects known to him in the boilers or machinery under his charge. Any engineer not complying with this section shall have his license revoked or suspended.

History: En. Sec. 558, Pol. C. 1895; re-en. Sec. 1647, Rev. C. 1907; amd. Sec. 7, Ch. 30, L. 1913; re-en. Sec. 2718, R.C.M. 1921; re-en. Sec. 2718, R.C.M. 1935; amd. Sec. 6, Ch. 225, L. 1971; amd. Sec. 27, Ch. 182, L. 1975; R.C.M. 1947, 69-1507(part).

50-74-215. Interior and exterior examination of boiler. (1) The inspector must satisfy himself by a thorough interior and exterior examination that the boilers are well-made and of good and suitable material; that the openings for the passage of water and steam, respectively, and all pipes and tubes exposed to heat are of the proper dimensions and free from obstructions; that the flues are circular in shape; that the fire line of the furnace is at least 2 inches below prescribed minimum water line of the boilers; that the arrangements for delivering the feed water are such that the boilers cannot be injured thereby; and that such boilers and the steam connections may be safely employed without danger to life.

(2) No boiler or steam pipe or any of the connections thereto which are made in whole or in part of bad material or are unsafe from any cause shall be approved. Nothing herein shall be construed to prevent the use of any boiler or steam generator, which may not be constructed of riveted iron or steel plates, when the inspector has satisfactory evidence that such boiler or

steam generator is equal in strength to and as safe from explosion as boilers of the best quality, constructed of iron or steel plates.

History: (1)En. Sec. 554, Pol. C. 1895; re-en. Sec. 1643, Rev. C. 1907; amd. Sec. 5, Ch. 30, L. 1913; amd. Sec. 1, Ch. 32, L. 1919; re-en. Sec. 2714, R.C.M. 1921; re-en. Sec. 2714, R.C.M. 1935; amd. Sec. 2, Ch. 77, L. 1967; amd. Sec. 3, Ch. 225, L. 1971; amd. Sec. 26, Ch. 182, L. 1975; Sec. 69-1503, R.C.M. 1947; (2)En. Sec. 556, Pol. C. 1895; re-en. Sec. 1645, Rev. C. 1907; re-en. Sec. 2716, R.C.M. 1921; re-en. Sec. 2716, R.C.M. 1935; amd. Sec. 5, Ch. 225, L. 1971; Sec. 69-1505, R.C.M. 1947; R.C.M. 1947, 69-1503(part), 69-1505.

50-74-216. Hydrostatic pressure test. When necessary, the boiler inspector shall subject boilers, except those exempted by 50-74-103, to hydrostatic pressure, which hydrostatic pressure shall not exceed 150% of the steam pressure allowed on the boilers, providing there are no such leaks on such boilers which prevent the inspector from applying such hydrostatic pressure.

History: En. Sec. 554, Pol. C. 1895; re-en. Sec. 1643, Rev. C. 1907; amd. Sec. 5, Ch. 30, L. 1913; amd. Sec. 1, Ch. 32, L. 1919; re-en. Sec. 2714, R.C.M. 1921; re-en. Sec. 2714, R.C.M. 1935; amd. Sec. 2, Ch. 77, L. 1967; amd. Sec. 3, Ch. 225, L. 1971; amd. Sec. 26, Ch. 182, L. 1975; R.C.M. 1947, 69-1503(part).

50-74-217. Other inspection requirements. The inspector must satisfy himself that:

(1) the safety valves are of suitable relieving capacity ratings, sufficient in number and area, and properly arranged and are properly adjusted so as not to allow a greater pressure in a boiler than the amount prescribed by the inspection certificate;

(2) there are a sufficient number of gauge cocks properly inserted to indicate the amount of water and suitable gauges that will correctly record the pressure of steam; and

(3) adequate and certain provisions for an ample supply of water to feed the boiler at all times and suitable means for blowing out are provided so as to thoroughly remove mud and sediment from all parts of the boiler when it is under pressure of steam.

History: En. Sec. 555, Pol. C. 1895; re-en. Sec. 1644, Rev. C. 1907; amd. Sec. 6, Ch. 30, L. 1913; re-en. Sec. 2715, R.C.M. 1921; re-en. Sec. 2715, R.C.M. 1935; amd. Sec. 4, Ch. 225, L. 1971; amd. Sec. 9, Ch. 187, L. 1977; R.C.M. 1947, 69-1504(1).

50-74-218. Safe working pressure. (1) If a boiler is constructed with lap horizontal seams on the boiler, dome, or drum, a factor of 4 ½ shall be used in determining the safe working pressure allowed on the boiler.

(2) If a boiler is constructed with butt strap horizontal seams, a factor of four may be used in determining the safe working pressure.

(3) If a boiler rests on a side wall on lugs, is hung by I-beams, or is in any way set up so that the weight of the boiler is pulling against the horizontal seam of rivets, a factor of five must be used in determining the safe working pressure.

(4) If the horizontal lap seams of a boiler are exposed to the fire, a factor of five must be used in determining the safe working pressure.

(5) On new stay bolts, 7,500 pounds pressure per square inch is allowed. If the stay bolts are corroded or defective, the inspector must determine the pressure to be allowed on them.

(6) On braces made of solid material, 8,000 pounds pressure per square inch is allowed. On welded braces or braces with only one crowfoot, 6,000 pounds pressure per square inch is allowed.

(7) No cast iron may be used in the construction or reinforcements of a boiler if the pressure allowed on the boiler is more than 100 pounds per square inch.

History: En. Sec. 555, Pol. C. 1895; re-en. Sec. 1644, Rev. C. 1907; amd. Sec. 6, Ch. 30, L. 1913; re-en. Sec. 2715, R.C.M. 1921; re-en. Sec. 2715, R.C.M. 1935; amd. Sec. 4, Ch. 225, L. 1971; amd. Sec. 9, Ch. 187, L. 1977; R.C.M. 1947, 69-1504(3).

50-74-219. Fee for special inspection. Whenever, upon request of the owner or operator of any boiler, it is necessary for the inspector to make a special trip for the inspection of the boiler, the mileage and per diem allowed by law shall be charged and collected by the division.

History: En. Sec. 4, Ch. 32, L. 1905; re-en. Sec. 1652, Rev. C. 1907; amd. Sec. 12, Ch. 30, L. 1913; amd. Sec. 3, Ch. 32, L. 1919; re-en. Sec. 2723, R.C.M. 1921; re-en. Sec. 2723, R.C.M. 1935; amd. Sec. 1, Ch. 54, L. 1959; amd. Sec. 3, Ch. 77, L. 1967; amd. Sec. 1, Ch. 255, L. 1969; amd. Sec. 11, Ch. 225, L. 1971; amd. Sec. 30, Ch. 182, L. 1975; amd. Sec. 1, Ch. 83, L. 1977; R.C.M. 1947, 69-1512(1).

Part 3

Licenses

50-74-301. License required to operate boilers and steam engines. All boilers and steam engines, except as exempted in 50-74-103, come under the provisions of this chapter, and persons operating same are required to hold the proper grade of license.

History: En. Sec. 5, Ch. 32, L. 1905; re-en. Sec. 1655, Rev. C. 1907; amd. Sec. 13, Ch. 30, L. 1913; amd. Sec. 4, Ch. 32, L. 1919; re-en. Sec. 2726, R.C.M. 1921; amd. Sec. 1, Ch. 140, L. 1923; re-en. Sec. 2726, R.C.M. 1935; amd. Sec. 4, Ch. 77, L. 1967; amd. Sec. 14, Ch. 225, L. 1971; amd. Sec. 33, Ch. 182, L. 1975; R.C.M. 1947, 69-1515(part).

50-74-302. General requirements for licensure. No person may be granted a license to operate steam or water boilers and steam machinery under the provisions of this chapter who has not met the qualifications for licensing and been found to be competent by examination to perform the duties of an engineer.

History: En. Sec. 559, Pol. C. 1895; re-en. Sec. 1648, Rev. C. 1907; amd. Sec. 8, Ch. 30, L. 1913; re-en. Sec. 2719, R.C.M. 1921; re-en. Sec. 2719, R.C.M. 1935; amd. Sec. 7, Ch. 225, L. 1971; amd. Sec. 10, Ch. 187, L. 1977; R.C.M. 1947, 69-1508(part).

50-74-303. Engineer's license classifications. (1) Engineers entrusted with the operation, care, and management of steam or water boilers and steam machinery, as specified in 50-74-302, are divided into four classes, namely: first-class engineers, second-class engineers, third-class engineers, and low-pressure engineers.

(2) Licenses for the operation of steam or water boilers and steam machinery are divided into four classifications in accordance with the following schedule:

(a) First-class engineers are licensed to operate all classes, pressures, and temperatures of steam and water boilers and steam-driven machinery with the exception of traction and hoisting engines.

(b) Second-class engineers are licensed to operate steam boilers operating not in excess of 250 pounds per square inch gauge saturated steam pressure, water boilers operating not in excess of 375 pounds per square inch gauge pressure and 450 degrees F temperature, and steam-driven machinery not to exceed 100 horsepower per unit, with the exception of traction and hoisting engines.

(c) Third-class engineers are licensed to operate steam boilers operating not in excess of 100 pounds per square inch gauge saturated steam pressure and water boilers operating not in excess of 160 pounds per square inch gauge pressure and 350 degrees F temperature.

(d) Low-pressure engineers are licensed to operate steam boilers operating not in excess of 15 pounds per square inch gauge pressure and water boilers operating not in excess of 50 pounds per square inch gauge pressure and 250 degrees F temperature.

History: En. Sec. 3, Ch. 32, L. 1905; re-en. Sec. 1649, Rev. C. 1907; amd. Sec. 9, Ch. 30, L. 1913; amd. Sec. 2, Ch. 32, L. 1919; re-en. Sec. 2720, R.C.M. 1921; re-en. Sec. 2720, R.C.M. 1935; amd. Sec. 8, Ch. 225, L. 1971; amd. Sec. 26, Ch. 94, L. 1973; amd. Sec. 28, Ch. 182, L. 1975; amd. Sec. 11, Ch. 187, L. 1977; R.C.M. 1947, 69-1509(1), (2).

50-74-304. Requirements for engineer's license. Each applicant for an engineer's license must be physically and mentally capable of performing the required duties and meet the following minimum requirements for the class of engineer's license for which application is being made:

(1) An applicant for a low-pressure engineer's license must have at least 3 months' full-time experience in the operation of a boiler in this classification, successfully pass a written examination prescribed by the division, have passed his 18th birthday, and be found to be competent to operate a boiler in this classification.

(2) An applicant for a third-class engineer's license must have at least 6 months' full-time experience in the operation of a boiler in this classification under an engineer holding a valid third-class or higher license, successfully pass a written examination prescribed by the division, have passed his 18th birthday, and be found to be competent to operate a boiler in this classification.

(3) An applicant for a second-class engineer's license must:

(a) have at least 2 years' full-time experience in the operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid second-class or first-class license, successfully pass a written examination prescribed by the division, have passed his 18th birthday, and be found to be competent to operate a boiler and steam-driven machinery in this classification; or

(b) hold a valid third-class engineer's license and have at least 1 year's full-time experience in the operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid second-class or first-class license, successfully pass a written examination prescribed by the division, have passed his 18th birthday, and be found to be competent to operate a boiler and steam-driven machinery in this classification.

(4) An applicant for a first-class engineer's license must:

(a) have at least 3 years' full-time experience in the operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid first-class license, successfully pass a written examination prescribed by the division, have passed his 18th birthday, and be found to be competent to operate a boiler and steam-driven machinery in this classification;

(b) hold a valid second-class engineer's license and have at least 1 year's full-time experience in the operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid first-class license, successfully pass a written examination prescribed by the division, have passed his 18th birthday, and be found to be competent to operate a boiler and steam-driven machinery in this classification; or

(c) hold a valid third-class engineer's license and have at least 2 year's full-time experience in the operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid first-class license, successfully passed a written examination prescribed by the division, have passed his 18th birthday, and be found to be competent to operate a boiler and steam-driven machinery in this classification.

History: **En. Sec. 3, Ch. 32, L. 1905; re-en. Sec. 1649, Rev. C. 1907; amd. Sec. 9, Ch. 30, L. 1913; amd. Sec. 2, Ch. 32, L. 1919; re-en. Sec. 2720, R.C.M. 1921; re-en. Sec. 2720, R.C.M. 1935; amd. Sec. 8, Ch. 225, L. 1971; amd. Sec. 26, Ch. 94, L. 1973; amd. Sec. 28, Ch. 182, L. 1975; amd. Sec. 11, Ch. 187, L. 1977; R.C.M. 1947, 69-1509(3).**

50-74-305. Exceptions to requirements for engineer's license. Allowable exceptions or variances to the minimum requirements set out in 50-74-304 are as follows:

(1) An applicant for an engineer's license in any classification holding a valid license in that classification from another state having licensing requirements equal to or exceeding the minimum requirements set out in 50-74-304, successfully passing a written examination prescribed by the division, and found to be competent to operate a boiler and steam-driven machinery in that classification shall be granted a license in that classification.

(2) Operating experience in a classification accumulated in the United States military services or the merchant marine service satisfactory to the division may be accepted in lieu of the operating experience required for licensing of engineers in each of the license classifications.

(3) An applicant having training in the operation of steam or water boilers and steam machinery who has been certified as having satisfactorily completed a prescribed training course from a recognized vocational-technical training school or center or other division-approved institution or training program in the classification for which he is applying may, at the discretion of the division, be credited with a maximum of 6 months' experience toward a first-, second-, or third-class engineer's license.

History: **En. Sec. 3, Ch. 32, L. 1905; re-en. Sec. 1649, Rev. C. 1907; amd. Sec. 9, Ch. 30, L. 1913; amd. Sec. 2, Ch. 32, L. 1919; re-en. Sec. 2720, R.C.M. 1921; re-en. Sec. 2720, R.C.M. 1935; amd. Sec. 8, Ch. 225, L. 1971; amd. Sec. 26, Ch. 94, L. 1973; amd. Sec. 28, Ch. 182, L. 1975; amd. Sec. 11, Ch. 187, L. 1977; R.C.M. 1947, 69-1509(4).**

50-74-306. Traction licenses. (1) None of the licenses named in 50-74-303 entitle its holder to operate a traction engine.

(2) A person who is entrusted with the care and management of traction engines or boilers on wheels is required to pass an examination testing his competency to operate that class of machinery and procure a traction license.

(3) A traction license does not entitle its holder to operate any other class of steam machinery.

History: **En. Sec. 3, Ch. 32, L. 1905; re-en. Sec. 1649, Rev. C. 1907; amd. Sec. 9, Ch. 30, L. 1913; amd. Sec. 2, Ch. 32, L. 1919; re-en. Sec. 2720, R.C.M. 1921; re-en. Sec. 2720, R.C.M. 1935; amd. Sec. 8, Ch. 225, L. 1971; amd. Sec. 26, Ch. 94, L. 1973; amd. Sec. 28, Ch. 182, L. 1975; amd. Sec. 11, Ch. 187, L. 1977; R.C.M. 1947, 69-1509(part).**

50-74-307. Requirements for traction licenses. An applicant for a traction engineer's license must have at least 6 months' full-time experience in the operation of steam traction engines, successfully pass a written examination prescribed by the division, have passed his 18th birthday, and be found to be competent to operate a traction engine.

History: En. Sec. 3, Ch. 32, L. 1905; re-en. Sec. 1649, Rev. C. 1907; amd. Sec. 9, Ch. 30, L. 1913; amd. Sec. 2, Ch. 32, L. 1919; re-en. Sec. 2720, R.C.M. 1921; re-en. Sec. 2720, R.C.M. 1935; amd. Sec. 8, Ch. 225, L. 1971; amd. Sec. 26, Ch. 94, L. 1973; amd. Sec. 28, Ch. 182, L. 1975; amd. Sec. 11, Ch. 187, L. 1977; R.C.M. 1947, 69-1509(part).

50-74-308. Waiver of experience requirement for traction licenses. The division, at its discretion, may waive the experience requirement for operators of traction engines which are maintained and operated as a hobby for the restoration and show purposes of antique equipment.

History: En. Sec. 3, Ch. 32, L. 1905; re-en. Sec. 1649, Rev. C. 1907; amd. Sec. 9, Ch. 30, L. 1913; amd. Sec. 2, Ch. 32, L. 1919; re-en. Sec. 2720, R.C.M. 1921; re-en. Sec. 2720, R.C.M. 1935; amd. Sec. 8, Ch. 225, L. 1971; amd. Sec. 26, Ch. 94, L. 1973; amd. Sec. 28, Ch. 182, L. 1975; amd. Sec. 11, Ch. 187, L. 1977; R.C.M. 1947, 69-1509(part).

50-74-309. License fees. Applicants for engineer's license shall pay fees according to the class of license for which application is made, as specified in the following schedule:

(1) first class	$30
(2) second class	$20
(3) third class	$12
(4) low pressure	$ 8
(5) traction	$12
(6) renewal of license	$ 4
(7) replacement of lost certificate	$ 2

History: En. Sec. 4, Ch. 32, L. 1905; re-en. Sec. 1652, Rev. C. 1907; amd. Sec. 12, Ch. 30, L. 1913; amd. Sec. 3, Ch. 32, L. 1919; re-en. Sec. 2723, R.C.M. 1921; re-en. Sec. 2723, R.C.M. 1935; amd. Sec. 1, Ch. 54, L. 1959; amd. Sec. 3, Ch. 77, L. 1967; amd. Sec. 1, Ch. 255, L. 1969; amd. Sec. 11, Ch. 225, L. 1971; amd. Sec. 30, Ch. 182, L. 1975; amd. Sec. 1, Ch. 83, L. 1977; R.C.M. 1947, 69-1512(2).

50-74-310. Application to be accompanied by one-half of license fee. Each application shall be accompanied by a payment equal to 50% of the license fee for which application is being made. The payment shall be forfeited in the event the applicant fails to appear for the examination at the scheduled time or fails to pass the examination.

History: En. Sec. 4, Ch. 32, L. 1905; re-en. Sec. 1652, Rev. C. 1907; amd. Sec. 12, Ch. 30, L. 1913; amd. Sec. 3, Ch. 32, L. 1919; re-en. Sec. 2723, R.C.M. 1921; re-en. Sec. 2723, R.C.M. 1935; amd. Sec. 1, Ch. 54, L. 1959; amd. Sec. 3, Ch. 77, L. 1967; amd. Sec. 1, Ch. 255, L. 1969; amd. Sec. 11, Ch. 225, L. 1971; amd. Sec. 30, Ch. 182, L. 1975; amd. Sec. 1, Ch. 83, L. 1977; R.C.M. 1947, 69-1512(3).

50-74-311. Waiting period before reexamination permitted. In case of the failure of any applicant to successfully pass an examination, 45 days must elapse before he can again be examined for license.

History: En. Sec. 4, Ch. 32, L. 1905; re-en. Sec. 1652, Rev. C. 1907; amd. Sec. 12, Ch. 30, L. 1913; amd. Sec. 3, Ch. 32, L. 1919; re-en. Sec. 2723, R.C.M. 1921; re-en. Sec. 2723, R.C.M. 1935; amd. Sec. 1, Ch. 54, L. 1959; amd. Sec. 3, Ch. 77, L. 1967; amd. Sec. 1, Ch. 255, L. 1969; amd. Sec. 11, Ch. 225, L. 1971; amd. Sec. 30, Ch. 182, L. 1975; amd. Sec. 1, Ch. 83, L. 1977; R.C.M. 1947, 69-1512(4).

50-74-312. Review of license rejection. (1) If any person who has applied for a license under the provisions of this chapter and has been rejected feels aggrieved, he may, at any time after the lapse of 10 days and within 45 days after the date of his rejection, in writing set forth the causes of his grievance and request a division review. Such request must be addressed to the division and shall be signed by the rejected applicant.

(2) Within 2 days after receiving such request, the division shall notify the applicant in writing that on a certain day, which shall not be less than 5 or more than 30 days after the date the division receives the written request, the division shall review and evaluate the application.

(3) The applicant may appear in person at the review if he so desires. At least 2 days before the day set for the review, the applicant may designate in writing to the division the name of an engineer holding a valid license of equal or higher grade with the one applied for, and such engineer may present himself in behalf of the applicant upon the day and at the hour fixed for the review.

(4) After the review is completed, if the division decides that the applicant is entitled to the license he has applied for, the division shall without delay issue a license accordingly but, if the division rejects the applicant, it is a final rejection and he must not be granted another examination for the space of 45 days after such last rejection, when he may again apply as provided by 50-74-309 through 50-74-311.

History: (1) thru (3)En. Sec. 564, Pol. C. 1895; re-en. Sec. 1653, Rev. C. 1907; re-en. Sec. 2724, R.C.M. 1921; re-en. Sec. 2724, R.C.M. 1935; amd. Sec. 12, Ch. 225, L. 1971; amd. Sec. 31, Ch. 182, L. 1975; Sec. 69-1513, R.C.M. 1947; (4)En. Sec. 565, Pol. C. 1895; re-en. Sec. 1654, Rev. C. 1907; re-en. Sec. 2725, R.C.M. 1921; re-en. Sec. 2725, R.C.M. 1935; amd. Sec. 13, Ch. 225, L. 1971; amd. Sec. 32, Ch. 182, L. 1975; Sec. 69-1514, R.C.M. 1947; R.C.M. 1947, 69-1513, 69-1514.

50-74-313. Renewal of licenses. (1) All certificates of license to engineers of all classes shall be renewed yearly, except as herein provided.

(2) Any engineer failing to renew his license as herein provided or within at least 30 days after the date of expiration shall be assessed the fee for the original license of the same grade before the license will be reissued.

(3) Any engineer failing to renew his license within 12 months of the date of expiration must reapply for an engineer's license as required by the provisions of 50-74-303 through 50-74-308.

(4) Any engineer whose license expired while such engineer was in the military or naval service of the United States shall have 90 days from the time such engineer is discharged from such military or naval service within which to renew his license at the renewal fee.

History: En. Sec. 6, Ch. 32, L. 1905; re-en. Sec. 1656, Rev. C. 1907; amd. Sec. 14, Ch. 30, L. 1913; amd. Sec. 1, Ch. 54, L. 1919; re-en. Sec. 2727, R.C.M. 1921; amd. Sec. 2, Ch. 54, L. 1959; amd. Sec. 167, Ch. 147, L. 1963; amd. Sec. 15, Ch. 225, L. 1971; R.C.M. 1947, 69-1516.

50-74-314. Complaints and revocation of license. Whenever complaint is made against an engineer holding a license that he, through negligence, want of skill, or inattention to duty, permitted his boiler to burn or otherwise become in bad condition or that he has been found intoxicated or under the influence of drugs while on duty, it is the duty of the division to make a thorough investigation of the charge and upon satisfactory proof of such charge to revoke the license of the engineer.

History: En. Sec. 561, Pol. C. 1895; re-en. Sec. 1650, Rev. C. 1907; amd. Sec. 10, Ch. 30, L. 1913; re-en. Sec. 2721, R.C.M. 1921; amd. Sec. 9, Ch. 225, L. 1971; amd. Sec. 29, Ch. 182, L. 1975; R.C.M. 1947, 69-1510.

50-74-315. Unlawful to operate boiler or steam engine without license. (1) It is unlawful for any person in this state to operate a stationary boiler or steam engine or any boiler or steam engine other than engines and boilers exempted by the provisions of 50-74-103 without a license granted under the provisions of this chapter. The owner, renter, or user of any engine or boiler is equally liable for the violation of this section.

(2) A person who operates a boiler or steam engine without first obtaining a license is guilty of a misdemeanor and, upon conviction, shall be fined no less than $50 or more than $100 or be imprisoned in the county jail for any term not to exceed 60 days, or both.

History: (1)En. Sec. 568, Pol. C. 1895; re-en. Sec. 1657, Rev. C. 1907; amd. Sec. 15, Ch. 30, L. 1913; re-en. Sec. 2728, R.C.M. 1921; re-en. Sec. 2728, R.C.M. 1935; amd. Sec. 16, Ch. 225, L. 1971; amd. Sec. 34, Ch. 182, L. 1975; Sec. 69-1517, R.C.M. 1947; (2)En. Sec. 559, Pol. C. 1895; re-en. Sec. 1648, Rev. C. 1907; amd. Sec. 8, Ch. 30, L. 1913; re-en. Sec. 2719, R.C.M. 1921; re-en. Sec. 2719, R.C.M. 1935; amd. Sec. 7, Ch. 225, L. 1971; amd. Sec. 10, Ch. 187, L. 1977; Sec. 69-1508, R.C.M. 1947; R.C.M. 1947, 69-1508(part), 69-1517(part).

50-74-316. Unlawful to employ unlicensed operator. It shall be unlawful, except as stated in 50-74-317, for any person, firm, or corporation to employ any person not duly licensed as an engineer within the meaning of this chapter to run or operate any of the boilers or engines subject to the provisions of this chapter.

History: En. Sec. 568, Pol. C. 1895; re-en. Sec. 1657, Rev. C. 1907; amd. Sec. 15, Ch. 30, L. 1913; re-en. Sec. 2728, R.C.M. 1921; re-en. Sec. 2728, R.C.M. 1935; amd. Sec. 16, Ch. 225, L. 1971; amd. Sec. 34, Ch. 182, L. 1975; R.C.M. 1947, 69-1517(part).

50-74-317. When unlicensed person may operate. (1) In case of accident, sickness, or any unforeseen prevention of the licensed engineer employed by any owner, renter, or user of an engine or boiler, the owner, renter, or user may for 15 days employ any person of the age of 18 years or over whom he may consider competent to run the engine or boiler.

(2) Although such person so employed may not be the holder of an engineer's license, he shall have reasonable qualifications acceptable to the division.

(3) The person so employing the unlicensed engineer shall immediately notify the division.

(4) No owner, renter, or user of boilers or steam machinery shall be allowed to so employ unlicensed engineers for more than 15 days in any one calendar year.

History: En. Sec. 568, Pol. C. 1895; re-en. Sec. 1657, Rev. C. 1907; amd. Sec. 15, Ch. 30, L. 1913; re-en. Sec. 2728, R.C.M. 1921; re-en. Sec. 2728, R.C.M. 1935; amd. Sec. 16, Ch. 225, L. 1971; amd. Sec. 34, Ch. 182, L. 1975; R.C.M. 1947, 69-1517(part).

CHAPTER 75

CONSOLIDATION OF BOILER, MINE, AND COAL MINE INSPECTORS

(Repealed. Sec. 10, Ch. 21, L. 1981)

Chapter Compiler's Comments

Histories of Repealed Sections:

50-75-101. En. Sec. 1, Ch. 92, L. 1917; amd. Sec. 1, Ch. 47, L. 1921; re-en. Sec. 3034, R.C.M. 1921; re-en. Sec. 3034, R.C.M. 1935; R.C.M. 1947, 50-901.

50-75-102. En. Sec. 2, Ch. 92, L. 1917; amd. Sec. 2, Ch. 47, L. 1921; re-en. Sec. 3035, R.C.M. 1921; re-en. Sec. 3035, R.C.M. 1935; R.C.M. 1947, 50-902.

50-75-103. En. Sec. 3, Ch. 92, L. 1917; re-en. Sec. 3036, R.C.M. 1921; re-en. Sec. 3036, R.C.M. 1935; R.C.M. 1947, 50-903.

50-75-104. En. Sec. 4, Ch. 92, L. 1917; re-en. Sec. 3037, R.C.M. 1921; re-en. Sec. 3037, R.C.M. 1935; R.C.M. 1947, 50-904(part).

50-75-105. En. Sec. 4, Ch. 92, L. 1917; re-en. Sec. 3037, R.C.M. 1921; re-en. Sec. 3037, R.C.M. 1935; R.C.M. 1947, 50-904(part); amd. Sec. 24, Ch. 37, L. 1979.

50-75-106. En. Sec. 5, Ch. 92, L. 1917; re-en. Sec. 3038, R.C.M. 1921; re-en. Sec. 3038, R.C.M. 1935; R.C.M. 1947, 50-905.

50-75-107. En. Sec. 55, Ch. 96, L. 1915; amd. Sec. 6, Ch. 92, L. 1917; re-en. Sec. 3039, R.C.M. 1921; re-en. Sec. 3039, R.C.M. 1935; R.C.M. 1947, 50-906(part); amd. Sec. 25, Ch. 37, L. 1979.

CHAPTER 76

HOISTING ENGINES

Part 1 — General Provisions

Section

50-76-101. Where chapter not to apply.
50-76-102. Hoisting engine license required.
50-76-103. Crane and hoist license required.
50-76-104. Application and fee for license.
50-76-105. Renewal and period of validity of license.
50-76-106. Revocation of license.
50-76-107. Scope of license.
50-76-108. Renewal of application by rejected candidate.
50-76-109. Violation of chapter a misdemeanor.
50-76-110. Crane inspector.

Part 1

General Provisions

50-76-101. Where chapter not to apply. (1) This chapter shall not apply to hoisting engines, air compressors, or elevators under federal control or to operating elevators in completed private or public buildings.

(2) The provisions of this chapter shall not apply to forklifts and front-end and rear-end loaders.

History: (1)En. Sec. 3, Ch. 104, L. 1915; amd. Sec. 2, Ch. 31, L. 1919; re-en. Sec. 2732, R.C.M. 1921; re-en. Sec. 2732, R.C.M. 1947; amd. Sec. 19, Ch. 225, L. 1971; amd. Sec. 4, Ch. 456, L. 1975; Sec. 69-1603, R.C.M. 1947; (2)En. Sec. 1, Ch. 104, L. 1915; amd. Sec. 1, Ch. 31, L. 1919; re-en. Sec. 2730, R.C.M. 1921; re-en. Sec. 2730, R.C.M. 1935; amd. Sec. 17, Ch. 225, L. 1971; amd. Sec. 35, Ch. 182, L. 1975; amd. Sec. 1, Ch. 456, L. 1975; Sec. 69-1601, R.C.M. 1947; R.C.M. 1947, 69-1601(5), 69-1603(2).

50-76-102. Hoisting engine license required. (1) (a) It is unlawful for any person to operate any hoisting engine driven by any power when used in lowering or hoisting personnel or material in industrial operations or on construction projects without first obtaining a license therefor from the division.

(b) In emergencies under 50-74-317 relating to the employment of unlicensed engineers, the provisions of that section shall apply to the operation of the engines and machinery named herein.

(2) First-class hoisting engineers shall be licensed to operate hoisting engines driven by any power and unlimited horsepower used in the lowering or hoisting of personnel or material in industrial operations or on construction projects.

(3) Second-class hoisting engineers shall be licensed to operate hoisting engines driven by any power and not in excess of 100 brake horsepower used in the lowering or hoisting of personnel or material in industrial operations or on construction projects.

(4) The provisions of this section shall not apply to hoists and cranes defined in 50-76-103.

History: En. Sec. 1, Ch. 104, L. 1915; amd. Sec. 1, Ch. 31, L. 1919; re-en. Sec. 2730, R.C.M. 1921; re-en. Sec. 2730, R.C.M. 1935; amd. Sec. 17, Ch. 225, L. 1971; amd. Sec. 35, Ch. 182, L. 1975; amd. Sec. 1, Ch. 456, L. 1975; R.C.M. 1947, 69-1601(1) thru (4).

50-76-103. Crane and hoist license required. (1) (a) It is unlawful for a person to operate any hoisting equipment, when used in hoisting or lowering personnel or material, that has a manufacturer's rating of above 6 tons and a boom length of more than 25 feet without first obtaining a license from the division. This equipment includes overhead trolley cranes used in construction only and excludes equipment with excavation attachments or log loading equipment when in use.

(b) In emergencies, 50-74-317 shall apply to the operation of the equipment named in this section.

(2) Licensing is as follows:

(a) First-class hoisting engineers are licensed to operate any hoisting equipment in industrial or construction operations.

(b) (i) An applicant for a first-class hoisting engineer's license shall have:

(A) no less than 3 years' experience operating equipment requiring a second-class hoisting engineer's license or shall otherwise be shown to be equivalently competent by examination;

(B) passed his 18th birthday; and

(C) passed a written test prescribed by the division.

(ii) An annual physical exam is required of all licensees.

(c) Second-class hoisting engineers are licensed to operate hoisting equipment with a manufacturer's rating of 6 tons and a boom length of 25 feet up to equipment with a rating of 15 tons and a boom length of 60 feet.

(d) (i) Applicants for a second-class hoisting engineer's license shall:

(A) have no less than 2 years' experience in actual operation of hoisting equipment covered by this section or shall otherwise be shown to be equivalently competent by examination;

(B) successfully pass a written examination prescribed by the division; and

(C) have passed their 18th birthday.

(ii) An annual physical exam is required of all licensees.

(e) Third-class hoisting engineers are licensed to move all truck cranes driven by any power and of any capacity. This license requirement applies to truck crane oilers who move truck cranes.

(f) Applicants for a third-class hoisting engineer's license shall successfully pass a written test prescribed by the division and shall be at least 18 years old before receiving this license.

(3) The division shall reexamine each licensed engineer or operator every 5 years during the anniversary month of his license if the licensee has not worked at the trade for 5 years.

History: **En. 69-1601.1 by Sec. 2, Ch. 456, L. 1975; amd. Sec. 1, Ch. 148, L. 1977; R.C.M. 1947, 69-1601.1.**

50-76-104. Application and fee for license. Application for licenses shall be made to the division in the same manner and the same fee shall be charged as required by law for obtaining a license to operate steam engines, boilers, and steam-driven machinery under chapter 74 of this title.

History: **En. Sec. 2, Ch. 104, L. 1915; re-en. Sec. 2731, R.C.M. 1921; re-en. Sec. 2731, R.C.M. 1935; amd. Sec. 18, Ch. 225, L. 1971; amd. Sec. 36, Ch. 182, L. 1975; amd. Sec. 3, Ch. 456, L. 1975; R.C.M. 1947, 69-1602(part).**

50-76-105. Renewal and period of validity of license. The license is valid for 1 year from the date of issuance and may be renewed in the same manner provided by law for the renewal of a license to operate steam engines, boilers, or steam-driven machinery under chapter 74 of this title.

History: **En. Sec. 2, Ch. 104, L. 1915; re-en. Sec. 2731, R.C.M. 1921; re-en. Sec. 2731, R.C.M. 1935; amd. Sec. 18, Ch. 225, L. 1971; amd. Sec. 36, Ch. 182, L. 1975; amd. Sec. 3, Ch. 456, L. 1975; R.C.M. 1947, 69-1602(part).**

50-76-106. Revocation of license. The division may revoke any license issued under this chapter for any of the reasons for which the division may revoke a license to operate steam engines, boilers, or steam-driven machinery under chapter 74 of this title.

History: **En. Sec. 2, Ch. 104, L. 1915; re-en. Sec. 2731, R.C.M. 1921; re-en. Sec. 2731, R.C.M. 1935; amd. Sec. 18, Ch. 225, L. 1971; amd. Sec. 36, Ch. 182, L. 1975; amd. Sec. 3, Ch. 456, L. 1975; R.C.M. 1947, 69-1602(part).**

50-76-107. Scope of license. A license granted under this chapter entitles the holder to operate any of the machinery named in 50-76-102 and 50-76-103, and the license shall specify that machinery, but no license issued shall authorize or qualify the person to whom issued to operate a boiler, steam engine, steam-driven machinery, or air compressor.

History: **En. Sec. 3, Ch. 104, L. 1915; amd. Sec. 2, Ch. 31, L. 1919; re-en. Sec. 2732, R.C.M. 1921; re-en. Sec. 2732, R.C.M. 1947; amd. Sec. 19, Ch. 225, L. 1971; amd. Sec. 4, Ch. 456, L. 1975; R.C.M. 1947, 69-1603(1).**

50-76-108. Renewal of application by rejected candidate. Any person who has applied for a license under this chapter and has been rejected may renew his application for a license within the time and in the manner prescribed in 50-74-312.

History: **En. Sec. 6, Ch. 104, L. 1915; re-en. Sec. 2735, R.C.M. 1921; amd. Sec. 5, Ch. 456, L. 1975; R.C.M. 1947, 69-1606.**

50-76-109. Violation of chapter a misdemeanor. Every person who operates any of the engines and machinery named in 50-76-102 or 50-76-103 for which a license is required without first obtaining a license as required by the sections referred to above and every owner, employer, or manager of any such engines or machinery who permits any unlicensed person to operate such engines or machinery or any person who violates any of the provisions of this chapter is guilty of a misdemeanor.

History: **En. Sec. 7, Ch. 104, L. 1915; re-en. Sec. 2736, R.C.M. 1921; re-en. Sec. 2736, R.C.M. 1935; amd. Sec. 21, Ch. 225, L. 1971; amd. Sec. 7, Ch. 456, L. 1975; amd. Sec. 2, Ch. 148, L. 1977; R.C.M. 1947, 69-1607.**

50-76-110. Crane inspector. The division shall employ at least one crane inspector. He shall hold a first-class hoisting engineer's license under this chapter for 1 year and have 3 years' experience operating cranes.

History: En. 69-1608 by Sec. 6, Ch. 456, L. 1975; R.C.M. 1947, 69-1608.

CHAPTER 77

CONSTRUCTION SITE HEALTH AND SAFETY

Part 1 — General Provisions

Section
50-77-101. Construction of scaffolds.
50-77-102. Temporary floors for protection of workmen.
50-77-103. Planking above scaffolds.
50-77-104. Guarding of stairways and other openings.
50-77-105. Temporary toilets.
50-77-106. Building inspector to enforce chapter.
50-77-107. Penalty for violation.

Part 1

General Provisions

50-77-101. Construction of scaffolds. All scaffolds erected in this state for use in the erection, repair, alteration, or removal of buildings shall be well and safely supported, of sufficient width, and properly secured so as to ensure the safety of persons working on them or passing under them or by them and to prevent them from falling or to prevent any material that may be used, placed, or deposited on them from falling.

History: En. Sec. 1, Ch. 107, L. 1909; re-en. Sec. 2672, R.C.M. 1921; re-en. Sec. 2672, R.C.M. 1935; amd. Sec. 8, Ch. 187, L. 1977; R.C.M. 1947, 69-1401.

50-77-102. Temporary floors for protection of workmen. (1) It shall be the duty of every owner, person, or corporation who shall have the direct and immediate supervision or control of the construction or remodeling of any building having more than three framed floors, whether some or all of said floors are above or below the established street grade, to provide and lay upon the upper side of the joists or girders, or both, of the first floor below the riveters and structural steel setters a plank floor, which shall be laid to form a good substantial temporary floor for the protection of employees and all persons engaged above or below or on such temporary floor in such building.

(2) Where the permanent floor is in place on the floor herein required to be planked, a temporary protective floor shall not be required.

(3) If the floor or permanent floor of the second floor, any other floor above the second, or roof is being placed previous to the permanent floor immediately below the floor which is being arched or planked, a good substantial temporary floor shall be laid on the joists and girders of the next lower floor.

(4) For the purpose of this section, the lowest framed floor in the building shall be considered the first floor.

History: En. Sec. 2, Ch. 107, L. 1909; re-en. Sec. 2673, R.C.M. 1921; R.C.M. 1947, 69-1402.

50-77-103. Planking above scaffolds. In buildings more than three stories high where persons are working on a scaffold or scaffolds on the outside of such buildings, such persons shall be protected by well secured planking set over the heads of such persons for the full width of the scaffolding on which they are working if another story or stories are being raised above such persons during the time they are working on such outside scaffold or scaffolding.

History: En. Sec. 3, Ch. 107, L. 1909; re-en. Sec. 2674, R.C.M. 1921; R.C.M. 1947, 69-1403.

50-77-104. Guarding of stairways and other openings. It shall be the duty of all owners, contractors, builders, or persons having the direct and immediate control or supervision of any buildings in course of erection, which shall be more than 30 feet high, to see that all stairways, elevator openings, flues, and all other openings in the floors shall be covered or properly protected.

History: En. Sec. 4, Ch. 107, L. 1909; re-en. Sec. 2675, R.C.M. 1921; re-en. Sec. 2675, R.C.M. 1935; R.C.M. 1947, 69-1404(part).

50-77-105. Temporary toilets. Wherever such building or buildings over three stories high, other than a residence, are being erected in any city or town, temporary toilets in or convenient to such building shall be maintained for the convenience of the employees.

History: En. Sec. 4, Ch. 107, L. 1909; re-en. Sec. 2675, R.C.M. 1921; re-en. Sec. 2675, R.C.M. 1935; R.C.M. 1947, 69-1404(part).

50-77-106. Building inspector to enforce chapter. It is hereby made the duty of the building inspector, his deputy, or other authorities in any county, city, town, or village in the state, through the county attorney or any other attorney, in case of failure of such owner, person, or corporation to comply with this chapter promptly, to take the necessary steps to enforce the provisions of this chapter.

History: En. Sec. 5, Ch. 107, L. 1909; re-en. Sec. 2676, R.C.M. 1921; re-en. Sec. 2676, R.C.M. 1935; R.C.M. 1947, 69-1405(part).

50-77-107. Penalty for violation. Any person violating any of the provisions of the foregoing sections shall be fined not less than $100 or more than $200 for each offense.

History: En. Sec. 5, Ch. 107, L. 1909; re-en. Sec. 2676, R.C.M. 1921; re-en. Sec. 2676, R.C.M. 1935; R.C.M. 1947, 69-1405(part).

TITLES 51 AND 52

RESERVED

TITLE 53

SOCIAL SERVICES AND INSTITUTIONS

Ch.
1. General Administration of Institutions.
2. Administration of Public Assistance.
3. General Relief.
4. Children's Services.
5. Adult Services.
6. Medical Services.
7. Vocational Rehabilitation.
8. Economic Opportunity.
9. Services for Victims of Crime.
10. Administration of Human Services.
Chapters 11 through 19 reserved.
20. Developmentally Disabled.
21. Mentally Ill.
22. Interstate Compact on Mental Health.
23. Eugenical Sterilization. Repealed. Sec. 1, Ch. 286, L. 1981.
24. Alcoholism and Drug Dependence.
Chapters 25 through 29 reserved.
30. Corrections.

CHAPTER 1

GENERAL ADMINISTRATION OF INSTITUTIONS

Part 1 — General Provisions

Section
53-1-101. Definitions.
53-1-102. Removal of patients from state custodial institutions without permission a misdemeanor.
53-1-103. Distribution of alcoholic beverages or drugs to patients at state custodial institutions a misdemeanor.
53-1-104. Release of arsonist — notification of fire marshal bureau.

Part 2 — Department of Institutions

53-1-201. Purpose of department.
53-1-202. Institutions in department.
53-1-203. Powers and duties of department.
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Part 3 — Institutional Industries

53-1-301. Permitted institutional industries, powers of department, and incentive pay to inmates.
53-1-302. Disposition of receipts from sale of goods.
53-1-303. Prohibited acts.
53-1-304. Supervision of industries program.

Part 4 — Per Diem Payments for Institutional Care

53-1-401. Definitions.

53-1-402. Residents subject to per diem and ancillary charges.
53-1-403. Rules.
53-1-404. When per diem to be computed.
53-1-405. Monthly assessment of charges.
53-1-406. Investigation of ability to pay.
53-1-407. Appeal of determination of ability to pay.
53-1-408. Periodic review by department of ability to pay.
53-1-409. Liability of resident or responsible person for assessed charges.
53-1-410. Nonpayment not grounds for release.
53-1-411. Collections by department of revenue.
53-1-412. Collections from estates.
53-1-413. Deposit of payments.

Part 5 — Per Diem Payments for Residential Correctional Programs

53-1-501. Rates for board and room charged by the department.

Part 1

General Provisions

53-1-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Department" means the department of institutions provided for in Title 2, chapter 15, part 23.

(2) "Director" means the director of institutions provided for in 2-15-2301.

(3) "Institution" means any of the institutions listed in 53-1-202.

History: **En. Sec. 2, Ch. 199, L. 1965; amd. Sec. 39, Ch. 120, L. 1974; R.C.M. 1947, 80-1402; amd. Sec. 1, Ch. 495, L. 1979.**

53-1-102. Removal of patients from state custodial institutions without permission a misdemeanor. (1) A person, other than a parent or one having legal custody of the person of the patient or inmate, who permits or assists a resident patient or inmate of a state custodial institution to leave the institution without permission from the properly authorized member of the staff or proper court order is guilty of a misdemeanor and upon conviction is punishable by imprisonment in a county jail not exceeding 6 months or by a fine not exceeding $500, or both.

(2) Nothing herein is to be construed to conflict with laws relative to inmates of the Montana state prison.

History: **En. Sec. 1, Ch. 361, L. 1971; R.C.M. 1947, 80-1417.**

53-1-103. Distribution of alcoholic beverages or drugs to patients at state custodial institutions a misdemeanor. (1) A person who knowingly sells or distributes or attempts to sell or distribute alcoholic beverages or drugs to the resident patients or inmates of a state custodial institution without permission of the medical staff is guilty of a misdemeanor and, upon conviction, is punishable by imprisonment in a county jail not exceeding 6 months or by a fine not exceeding $500, or both.

(2) Nothing herein is to be construed to conflict with laws relative to inmates of the Montana state prison.

History: En. SEc. 1, Ch. 362, L. 1971; R.C.M. 1947, 80-1418.

53-1-104. Release of arsonist — notification of fire marshal bureau. (1) Each of the following institutions or facilities having the charge or custody of a person convicted of arson or of a person acquitted of arson on the ground of mental disease or defect shall give written notification to the fire marshal bureau of the department of justice whenever such a person is admitted or released by it:

(a) Warm Springs state hospital;
(b) State prison;
(c) Mountain View school;
(d) Pine Hills school;
(e) Swan River youth forest camp;
(f) Any county or city detention facility.

(2) The notification shall disclose:

(a) the name of the person;
(b) where the person is or will be located; and
(c) the type of fire the person was involved in.

History: En. 80-1403.1 by Sec. 1, Ch. 206, L. 1977; R.C.M. 1947, 80-1403.1.

Part 2

Department of Institutions

53-1-201. Purpose of department. The department shall utilize at maximum efficiency the resources of state government in a coordinated effort to:

(1) restore the physically or mentally disabled;
(2) rehabilitate the violators of law;
(3) sustain the vigor and dignity of the aged;
(4) provide for children in need of temporary protection or correctional counseling;
(5) train children of limited mental capacity to their best potential;
(6) rededicate the resources of the state to the productive independence of its now dependent citizens; and
(7) coordinate and apply the principles of modern institutional administration to the institutions of the state.

History: En. Sec. 1, Ch. 199, L. 1965; amd. Sec. 38, Ch. 120, L. 1974; R.C.M. 1947, 80-1401.

53-1-202. Institutions in department. (1) The following institutions are in the department:

(a) Galen state hospital;
(b) Montana veterans' home;
(c) State prison;
(d) Mountain View school;
(e) Pine Hills school;
(f) Boulder River school and hospital;
(g) Warm Springs state hospital;

(h) Montana center for the aged;

(i) Swan River youth forest camp;

(j) Eastmont training center;

(k) Any other institution which provides care and services for juvenile delinquents, including but not limited to youth forest camps and juvenile reception and evaluation centers.

(2) A state institution may not be moved, discontinued, or abandoned without prior consent of the legislature.

History: En. Sec. 3, Ch. 199, L. 1965; amd. Sec. 1, Ch. 320, L. 1967; amd. Sec. 1, Ch. 280, L. 1969; amd. Sec. 40, Ch. 120, L. 1974; R.C.M. 1947, 80-1403; amd. Sec. 174, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Deleted reference to the Montana children's center.

53-1-203. Powers and duties of department. The department shall:

(1) adopt rules for the admission, custody, transfer, and release of residents of institutions except as otherwise provided by law; however, no such rules may amend or alter the statutory powers and duties of the state board of pardons;

(2) subject to the functions of the department of administration, lease or purchase lands for use by institutions and classify those lands to determine which are of such character as to be most profitably used for agricultural purposes, taking into consideration the needs of all institutions for the food products that can be grown or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the persons confined in the institutions;

(3) utilize the staff and services of other state agencies and units of the Montana university system, within their respective statutory functions, to carry out its functions under this title;

(4) propose programs to the legislature to meet the projected long-range needs of institutions, including programs and facilities for the diagnosis, treatment, care, and aftercare of persons placed in institutions; and

(5) encourage the establishment of programs at the local level for the prevention and rehabilitation of physical and mental disability.

History: En. Sec. 5, Ch. 199, L. 1965; amd. Sec. 3, Ch. 320, L. 1967; amd. Sec. 33, Ch. 93, L. 1969; amd. Sec. 41, Ch. 120, L. 1974; amd. Sec. 43, Ch. 37, L. 1977; R.C.M. 1947, 80-1405.

53-1-204. Responsibility of warden and superintendents of institutions. The warden or superintendents of institutions in the department are responsible for the immediate management and control of their respective institutions, subject to the general policies and programs established by the department.

History: En. Sec. 6, Ch. 199, L. 1965; amd. Sec. 42, Ch. 120, L. 1974; R.C.M. 1947, 80-1406.

53-1-205. Repealed. Sec. 3, Ch. 495, L. 1979.

History: En. 80-1407.1 by Sec. 43, Ch. 120, L. 1974; R.C.M. 1947, 80-1407.1.

53-1-206. Participation by institutions in research programs. The department may direct a penal and corrective institution of the state to participate in and cooperate with programs of research and development being conducted and carried on by any units of the Montana university system, by any of the other educational institutions of the state of Montana, or by any foundation or agency thereof in the fields of science, health, education, and natural resources. These programs may include the voluntary participation of the inmates of the institution in testing and experimental work conducted as a part thereof. Any funds received from the authorized programs may be shared with the participating inmates or otherwise held and used for the welfare and rehabilitation thereof and may not become a part of the regular budgeted operation of the institution.

History: En. Sec. 1, Ch. 98, L. 1967; amd. Sec. 47, Ch. 120, L. 1974; amd. Sec. 45, Ch. 37, L. 1977; R.C.M. 1947, 80-1413.

Part 3

Institutional Industries

53-1-301. Permitted institutional industries, powers of department, and incentive pay to inmates. The department may:

(1) establish industries in institutions which will result in the production or manufacture of such products and the rendering of such services as may be needed by any department or agency of the state or any political subdivision thereof, by any agency of the federal government, by any other states or their political subdivisions, or by nonprofit organizations and that will assist in the rehabilitation of residents in institutions;

(2) contract with private industry for the sale of goods or components manufactured or produced in shops under its jurisdiction;

(3) print catalogs describing goods manufactured or produced by institutions and distribute the catalogs;

(4) fix the sale price for goods produced or manufactured at institutions. Prices shall not exceed prices existing in the open market for goods of comparable quality.

(5) require institutions to purchase needed goods from other institutions;

(6) provide for the repair and maintenance of property and equipment of institutions by residents of institutions;

(7) provide for construction projects up to the aggregate sum of $25,000 per project, by residents of institutions; provided, however, said construction work is not covered by a collective bargaining agreement;

(8) provide for the repair and maintenance at an institution of furniture and equipment of any state agency;

(9) provide for the manufacture at an institution of motor vehicle license plates and other related articles;

(10) with the approval of the department, sell manufactured or agricultural products and livestock on the open market;

(11) provide for the manufacture at an institution of highway, road, and street marking signs for the use of the state or any of its political subdivisions, except when the manufacture of the signs is in violation of a collective bargaining contract;

(12) (a) pay an inmate or resident of an institution from receipts from the sale of products produced or manufactured or services rendered in a program in which he is working.

(b) Payment for the performance of work may be based on the following criteria:

(i) knowledge and skill;
(ii) attitude toward authority;
(iii) physical effort;
(iv) responsibility for equipment and materials;
(v) regard for safety of others.

(c) The maximum rate of pay shall be determined by the appropriation established for each program.

History: En. Sec. 10, Ch. 199, L. 1965; amd. Sec. 51, Ch. 120, L. 1974; amd. Sec. 1, Ch. 275, L. 1975; R.C.M. 1947, 80-1501; amd. Sec. 1, Ch. 433, L. 1979; amd. Sec. 1, Ch. 426, L. 1981.

Compiler's Comments

1981 Amendment: Substituted language beginning with "such products and the rendering" through "or by nonprofit organizations" following "production or manufacture" near the beginning of (1) for "establish industries in institutions which will result in the production or manufacture of goods that may be needed by institutions and other state agencies and that will assist in the rehabilitation of residents in institutions"; inserted (2); inserted "manufactured or" before "agricultural products" in subsection (10); substituted language in subsections (12)(a) and (b) for "pay an inmate of the state prison, from receipts from the sale of goods produced or manufactured at the institution where the resident resides or from the program that the inmate was working in, an amount not exceeding $1 per day as an incentive for the performance of work, based on the following criteria"; and added subsection (12)(c).

53-1-302. Disposition of receipts from sale of goods. Receipts from the sale of goods produced or manufactured by an institution shall be deposited in the revolving fund account for the use of the industries program of the institution. At the end of each biennium, all unobligated revolving funds over a $50,000 ending-fund balance, except for those funds reserved for equipment replacement as determined by an equipment replacement schedule, shall revert to the state general fund account.

History: En. Sec. 11, Ch. 199, L. 1965; R.C.M. 1947, 80-1502; amd. Sec. 2, Ch. 433, L. 1979; amd. Sec. 2, Ch. 426, L. 1981.

Compiler's Comments

1981 Amendment: Substituted the second sentence for "At the end of each fiscal year, not less than 75% of the unobligated balance in the revolving fund account shall be transferred to the general fund".

53-1-303. Prohibited acts. Unless permitted by the department, arranging for the labor of a resident of an institution is prohibited.

History: En. Sec. 12, Ch. 199, L. 1965; amd. Sec. 1, Ch. 383, L. 1975; R.C.M. 1947, 80-1503; amd. Sec. 3, Ch. 426, L. 1981.

Compiler's Comments

1981 Amendment: Deleted former subsections (1) and (2) relating to restrictions on sale or exchange to the consuming public of goods made in institutions; and substituted "Unless" for "Except where specifically" at the beginning of the section.

53-1-304. Supervision of industries program. The industries program shall be supervised by the director of the department of institutions or his designated representative, provided the administration of the industries program is separate from the administration of any institution where the program may be located.

History: En. Sec. 3, Ch. 433, L. 1979.

Part 4

Per Diem Payments for Institutional Care

53-1-401. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Ancillary charge" means identifiable, direct, resident service expenses as budgeted, including but not limited to operating room, anesthesia, x-ray, laboratory, blood bank, oxygen therapy, physical therapy, medical supply, drug, and specialized medical equipment expenses.

(2) "Care" means the care, treatment, support, maintenance, and other services rendered by the department to a resident.

(3) "Department" means the department of institutions provided for in Title 2, chapter 15, part 23.

(4) "Financially responsible person" means a spouse of a resident, the natural or adoptive parents of a resident under 18 years of age, or a guardian or conservator to the extent of the guardian's or conservator's responsibility for the financial affairs of the person who is a resident under applicable Montana law establishing the duties and limitations of guardianships or conservatorships.

(5) "Full-time equivalent resident load" means the total daily resident count for the fiscal year divided by the number of days in the year.

(6) "Long-term resident" means a resident in an institution listed in 53-1-402 for a continuous period in excess of 120 days. No absence of a resident from the institution due to a temporary or trial visit may be counted as interrupting the accrual of the 120 days required to attain the status of a long-term resident.

(7) "Per diem" means the gross daily cost of operating an institution as budgeted, excluding the cost of educational programs and ancillary charges, divided by the full-time equivalent resident load. However, a schedule of differing per diem charges may be computed, including a schedule of charges for residents treated on an outpatient basis, for each program established or funded by the legislature and assigned to an institution listed in 53-1-402.

(8) "Resident" means any person who is receiving care from or who is a resident of an institution listed in 53-1-402.

History: En. Sec. 14, Ch. 199, L. 1965; amd. Sec. 1, Ch. 336, L. 1974; amd. Sec. 2, Ch. 450, L. 1977; R.C.M. 1947, 80-1602.

53-1-402. Residents subject to per diem and ancillary charges. The department shall collect and process per diem and ancillary payments for the care of residents in the following institutions:

(1) Warm Springs state hospital;
(2) Boulder River school and hospital;
(3) Galen state hospital;
(4) Montana veterans' home;
(5) Montana center for the aged; and
(6) Eastmont training center.

History: En. Sec. 13, Ch. 199, L. 1965; amd. Sec. 4, Ch. 320, L. 1967; amd. Sec. 1, Ch. 276, L. 1969; amd. Sec. 1, Ch. 191, L. 1971; amd. Sec. 52, Ch. 120, L. 1974; amd. Sec. 1, Ch. 450, L. 1977; R.C.M. 1947, 80-1601.

53-1-403. Rules. In addition to the specific provisions of this part which require the department to make rules, the department may make rules for the administration of this part. All rules made by the department under the provisions of this part shall be made pursuant to the provisions of the Montana Administrative Procedure Act.

History: En. 80-1606 by Sec. 2, Ch. 324, L. 1974; amd. Sec. 6, Ch. 450, L. 1977; R.C.M. 1947, 80-1606.

53-1-404. When per diem to be computed. The per diem shall be computed on July 1 of each year by the department.

History: En. Sec. 15, Ch. 199, L. 1965; amd. Sec. 1, Ch. 240, L. 1969; amd. Sec. 53, Ch. 120, L. 1974; amd. Sec. 2, Ch. 336, L. 1974; amd. Sec. 46, Ch. 37, L. 1977; amd. Sec. 3, Ch. 450, L. 1977; R.C.M. 1947, 80-1603(part).

53-1-405. Monthly assessment of charges. (1) The department shall assess monthly against each resident or financially responsible person the full per diem charge, a proportionate share of the per diem charge, or no per diem charge, plus full ancillary charge, a proportionate share of the ancillary charge, or no ancillary charge based upon financial information given to the department during its investigation conducted according to the rules of the department.

(2) An assessment made by the department under this section shall be based on the resident's or financially responsible person's ability to pay. The department shall prescribe rules which establish criteria and a procedure for determining ability to pay. The department may not make an assessment which would place an undue financial burden on the resident or the financially responsible person.

History: En. Sec. 15, Ch. 199, L. 1965; amd. Sec. 1, Ch. 240, L. 1969; amd. Sec. 53, Ch. 120, L. 1974; amd. Sec. 2, Ch. 336, L. 1974; amd. Sec. 46, Ch. 37, L. 1977; amd. Sec. 3, Ch. 450, L. 1977; R.C.M. 1947, 80-1603(part).

53-1-406. Investigation of ability to pay. (1) Each agency of the state shall give all reasonable assistance to the department in obtaining all information necessary for the proper financial investigation of residents or financially responsible persons.

(2) Upon request of the department, the resident or financially responsible person shall make available to the department any financial information which the department considers essential for the purpose of determining ability to pay and which, under federal law, the department is not prohibited from seeking or obtaining from the resident or financially responsible person. Willful failure to provide the financial information requested by the department may result in a determination of ability to pay up to the full per diem and full ancillary charges until such time as the requested information is provided and the department makes a new determination of ability to pay.

(3) (a) A representative of the department authorized by the director may administer oaths, take testimony, and subpoena and compel the attendance of witnesses and the production of books, papers, records, and documents in connection with the duty of securing payments for care as provided by this part.

(b) A person who fails to obey the subpoena, upon petition of the department to any judge of a district court of the state, may be ordered by the judge to appear and show cause for his disobedience of the subpoena. The judge, after a hearing, may order that the subpoena be obeyed or, if it appears that the subpoena was inappropriately issued, may dismiss the petition. A person who fails to obey the subpoena when so ordered by the judge may be punished for contempt of court on application of the department to the district court.

History: En. Sec. 15, Ch. 199, L. 1965; amd. Sec. 1, Ch. 240, L. 1969; amd. Sec. 53, Ch. 120, L. 1974; amd. Sec. 2, Ch. 336, L. 1974; amd. Sec. 46, Ch. 37, L. 1977; amd. Sec. 3, Ch. 450, L. 1977; R.C.M. 1947, 80-1603(3).

53-1-407. Appeal of determination of ability to pay. If a resident or financially responsible person disagrees with the determination of the department as to his ability to pay any part of the per diem or ancillary charge, an appeal may be filed within 30 days of the date of the department's determination in any court of record in Montana having jurisdiction of the resident or financially responsible person liable for payment.

History: En. Sec. 15, Ch. 199, L. 1965; amd. Sec. 1, Ch. 240, L. 1969; amd. Sec. 53, Ch. 120, L. 1974; amd. Sec. 2, Ch. 336, L. 1974; amd. Sec. 46, Ch. 37, L. 1977; amd. Sec. 3, Ch. 450, L. 1977; R.C.M. 1947, 80-1603(4); amd. Sec. 2, Ch. 495, L. 1979.

Compiler's Comments

Effective date. Sec. 4, Ch. 495, L. 1979, provided: "This act is effective July 1, 1979, except that for the purpose of winding up the affairs of the board the sections repealed have effect in accordance with 2-8-121."

53-1-408. Periodic review by department of ability to pay. At appropriate intervals, the department shall review each determination of ability to pay and, if there has been a significant change in a resident's or financially responsible person's ability to pay, shall make a new determination. However, a new determination of ability to pay may not be applied retroactively unless the new determination results in a monthly assessment which is less than the previous monthly assessment or unless the resident or financially responsible person has materially misrepresented any financial information. The department shall make rules to implement the provisions of this section, including but not limited to rules for credit or refund of any overpayment resulting from an assessment retroactively reduced because of a new determination of ability to pay.

History: En. Sec. 15, Ch. 199, L. 1965; amd. Sec. 1, Ch. 240, L. 1969; amd. Sec. 53, Ch. 120, L. 1974; amd. Sec. 2, Ch. 336, L. 1974; amd. Sec. 46, Ch. 37, L. 1977; amd. Sec. 3, Ch. 450, L. 1977; R.C.M. 1947, 80-1603(5).

53-1-409. Liability of resident or responsible person for assessed charges. (1) The resident or financially responsible person is liable only for the per diem and ancillary charges which the department has assessed and billed the resident or financially responsible person. If amounts assessed and billed are retroactively reduced because of a new determination of ability to pay, the resident or financially responsible person is liable only for the reduced amount for the period of time covered by the retroactive reduction.

(2) The natural or adoptive parents of long-term residents are liable only for the charges made by the department for care in an amount not to exceed the cost of caring for a normal child at home as determined from standard sources by the department.

(3) Natural or adoptive parents of a long-term resident are not liable for any charges made by the department for care of a long-term resident incurred or accrued subsequent to the resident attaining age 18.

(4) No resident or financially responsible person is financially liable for care provided to a resident under any provision of a criminal statute.

History: (1), (4)En. Sec. 15, Ch. 199, L. 1965; amd. Sec. 1, Ch. 240, L. 1969; amd. Sec. 53, Ch. 120, L. 1974; amd. Sec. 2, Ch. 336, L. 1974; amd. Sec. 46, Ch. 37, L. 1977; amd. Sec. 3, Ch. 450, L. 1977; Sec. 80-1603, R.C.M. 1947; (2), (3)En. 80-1605 by Sec. 1, Ch. 324, L. 1974; amd. Sec. 5, Ch. 450, L. 1977; Sec. 80-1605, R.C.M. 1947; R.C.M. 1947, 80-1603(6), (7), 80-1605.

53-1-410. Nonpayment not grounds for release. A resident of an institution listed in 53-1-402 may not be released by reason of the nonpayment of the per diem or the ancillary charge unless, by certification of a physician consulted by the superintendent of the institution, the release is medically advisable.

History: En. Sec. 15, Ch. 199, L. 1965; amd. Sec. 1, Ch. 240, L. 1969; amd. Sec. 53, Ch. 120, L. 1974; amd. Sec. 2, Ch. 336, L. 1974; amd. Sec. 46, Ch. 37, L. 1977; amd. Sec. 3, Ch. 450, L. 1977; R.C.M. 1947, 80-1603(8).

53-1-411. Collections by department of revenue. If a resident or financially responsible person liable for payment of per diem and ancillary charges due under this part refuses or fails to make the payment, it is collectible by the department of revenue in the manner set forth in Title 17, chapter 4, for the collection of debts owing to the state or by a civil suit brought by the department of revenue in the name of the state of Montana.

History: En. Sec. 16, Ch. 199, L. 1965; amd. Sec. 4, Ch. 450, L. 1977; R.C.M. 1947, 80-1604(1).

53-1-412. Collections from estates. The state has a claim against the estate of a resident or against the estate of a financially responsible person for an amount due to the state at the death of the resident or financially responsible person. The attorney general shall collect any claim which the state may have against the estate. However, the claim may be enforced only to the extent that enforcement does not deprive a surviving spouse, child, or parent of the resident or financially responsible person of:

(1) an amount necessary for reasonable living expenses or educational expenses; or

(2) real estate while it is occupied as a home by the surviving spouse, child, or parent of the resident or financially responsible person.

History: En. Sec. 16, Ch. 199, L. 1965; amd. Sec. 4, Ch. 450, L. 1977; R.C.M. 1947, 80-1604(2).

53-1-413. Deposit of payments. The department shall deposit payments of per diem and ancillary charges in the state treasury to the credit of the general fund.

History: En. Sec. 16, Ch. 199, L. 1965; amd. Sec. 4, Ch. 450, L. 1977; R.C.M. 1947, 80-1604(3).

Part 5

Per Diem Payments for Residential Correctional Programs

53-1-501. Rates for board and room charged by the department. The department of institutions shall establish and charge reasonable rates for board and room for persons committed to any residential community correctional programs operated by the department. The department is directed to establish policies and rules to implement the charging of reasonable rates of board and room for such programs operated by the department.

History: En. Sec. 1, Ch. 517, L. 1979.

Compiler's Comments

Statement of intent. The statement of intent adopted with HB 77 (Ch. 517, L. 1979) provided: "A statement of intent is required for this bill in that it delegates authority to adopt rules in the last sentence of Section 1.

1. The rates for board and room established by policies or rules adopted by the Department

of Institutions under the authority delegated in Section 1 shall not exceed the cost of providing board and room.

2. The rates shall be based upon the person's ability to pay."

CHAPTER 2

ADMINISTRATION OF PUBLIC ASSISTANCE

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Part 1

General Provisions

53-2-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Department" means the department of social and rehabilitation services provided for in Title 2, chapter 15, part 22.

(2) "Public assistance" or "assistance" means any type of monetary or other assistance furnished under this title to a person by a state or county agency, regardless of the original source of the assistance.

(3) "Needy person" is one who is eligible for public assistance under the laws of this state.

(4) "Net monthly income" means one-twelfth of the difference between the net income for the taxable year as the term net income is defined in 15-30-101 and the state income tax paid as determined by the state income tax return filed during the current year.

(5) "Ward Indian" is hereby defined as an Indian who is living on an Indian reservation set aside for tribal use or is a member of a tribe or nation accorded certain rights and privileges by treaty or by federal statutes. If and when the federal Social Security Act is amended to define a "ward Indian", such definition shall supersede the foregoing definition.

History: (1), (2)En. 71-201.1 by Sec. 19, Ch. 121, L. 1974; Sec. 71-201.1, R.C.M. 1947; (3), (4)En. Sec. 3, Ch. 180, L. 1953; amd. Sec. 1, Ch. 98, L. 1973; amd. Sec. 2, Ch. 379, L. 1977; Sec. 71-235, R.C.M. 1947; (5)En. Subd. (h), Sec. 7, Part 1, Ch. 82, L. 1937; amd. Sec. 3, Ch. 129, L. 1939; amd. Sec. 1, Ch. 219, L. 1947; amd. Sec. 3, Ch. 199, L. 1951; amd. Sec. 1, Ch. 141, L. 1953; amd. Sec.

12, Ch. 212, L. 1965; amd. Sec. 17, Ch. 325, L. 1967; amd. Sec. 4, Ch. 261, L. 1971; amd. Sec. 14, Ch. 37, L. 1977; Sec. 71-211, R.C.M. 1947; R.C.M. 1947, 71-201.1, 71-211(part), 71-235(2).

53-2-102. State treasurer to receive funds. The treasurer of the state of Montana is hereby designated as the appropriate fiscal officer of the state to receive federal funds. All money for public assistance purposes appropriated by the legislature, received from the United States government, or received from any other source shall be paid into the state treasury to the credit of the department.

History: En. Sec. 1, Part 8, Ch. 82, L. 1937; amd. Sec. 210, Ch. 147, L. 1963; amd. Sec. 49, Ch. 121, L. 1974; amd. Sec. 36, Ch. 37, L. 1977; R.C.M. 1947, 71-901.

53-2-103. Records and reports. (1) Each county department shall keep such records and make such reports and in such detail as the department may from time to time require and shall transmit to the department upon its request copies of applications and any or all other records pertaining to any case.

(2) The department is hereby authorized and directed to keep such records in such form and containing such information as the federal social security board may from time to time require and comply with such provisions as the federal board may from time to time find necessary to assure the correctness and verification of such reports.

History: En. Sec. 20, Part 1, Ch. 82, L. 1937; amd. Sec. 10, Ch. 129, L. 1939; R.C.M. 1947, 71-231.

53-2-104. Audit of public assistance records. All applications, information, and records concerning any applicant or recipient of assistance or services under this title are subject to audit for legislative oversight or determination of public assistance fraud.

History: En. 71-231.4 by Sec. 1, Ch. 425, L. 1977; R.C.M. 1947, 71-231.4; amd. Sec. 1, Ch. 38, L. 1979.

53-2-105. Misuse of public assistance information unlawful. It shall be unlawful for any person, body, association, firm, corporation, or other agency to solicit, disclose, receive, make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of any lists or names for commercial or political purposes of any nature or for any purpose not directly connected with the administration of public assistance.

History: En. Sec. 2, Ch. 179, L. 1953; R.C.M. 1947, 71-231.2.

53-2-106. Penalty for misuse of public assistance information. Any person, body, association, corporation, firm, or other agency who shall willfully or knowingly violate any provision of 53-2-105 shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $25 or more than $1,000, to which may be added imprisonment in the county jail for any determinate period not to exceed 60 days. If the violation is by other than an individual, the imprisonment may be adjusted against any officer, agent, employee, servant, or other person of the association, corporation, firm, or other agency who committed or participated in such violation and is found guilty thereof.

History: En. Sec. 3, Ch. 179, L. 1953; R.C.M. 1947, 71-231.3.

53-2-107. Fraudulent obtaining of public assistance treated as theft. Whoever knowingly obtains by means of a willfully false statement, representation, or impersonation or other fraudulent device public assistance to which he is not entitled is guilty of theft as provided in 45-6-301.

History: En. Sec. 15, Part 1, Ch. 82, L. 1937; amd. Sec. 21, Ch. 37, L. 1977; amd. Sec. 1, Ch. 273, L. 1977; R.C.M. 1947, 71-226.

53-2-108. Overpayment of assistance — civil penalty when fraud. (1) If, due to department error, a recipient receives public assistance for which he is not eligible, the portion of payment that he is not entitled to receive shall be returned at the discretion of the department.

(2) If a person obtains any part of an assistance payment through fraudulent means as specified in 53-2-107, 125% of the amount of assistance to which the person was not entitled shall be repaid and, until fully paid, is a debt due the state.

History: En. Sec. 2, Ch. 257, L. 1979.

53-2-109. Recipients to report income not previously declared. Recipients of public assistance shall notify the department within 10 days of the receipt of any income or resources not previously declared to the department. Failure of the department to verify information provided by the recipient does not absolve the recipient from his obligation to provide accurate information to the department.

History: En. Sec. 1, Ch. 257, L. 1979.

Part 2

Department of Social and Rehabilitation Services

53-2-201. Powers and duties of department. (1) The department shall:

(a) administer or supervise all forms of public assistance, child protection, and child welfare, including the provision of medical care payments in behalf of recipients of public assistance;

(b) administer or supervise all child welfare activities, including:

(i) importation and exportation of children;

(ii) licensing of all children's foster family homes, group homes, child-care agencies and child-placing agencies;

(iii) the care of dependent and neglected children in substitute care placement and children who are free for adoption; and

(iv) the maintenance of supplemental day care for children;

(c) give consultant service to private institutions providing care for the needy, indigent, handicapped, or dependent adults;

(d) cooperate with other state agencies and develop provisions for services to the blind, including the prevention of blindness, the location of blind persons, medical services for eye conditions, and vocational guidance and training of the blind;

(e) provide services in respect to organization and supervise county departments of public welfare and county boards of public welfare in the administation of public assistance functions and for efficiency and economy;

(f) assist and cooperate with other state and federal departments, bureaus, agencies, and institutions, when so requested, by performing services in conformity with public assistance purposes;

(g) administer all state and federal funds allocated to the department for public assistance and do all things necessary, in conformity with federal and state law, for the proper fulfillment of public assistance purposes; and

(h) make rules governing payment for services and supplies provided to recipients of public assistance.

(2) The department may:

(a) purchase, exchange, condemn, or receive by gift either real or personal property which is necessary to carry out its public assistance functions. Title to property obtained under this subsection shall be taken in the name of the state of Montana for the use and benefit of the department.

(b) contract with the federal government to carry out its public assistance functions. The department may do all things necessary in order to avail itself of federal aid and assistance.

(c) make rules, consistent with state and federal law, establishing the amount, scope, and duration of services to be provided to recipients of public assistance.

History: En. Subd. (a) to (g), Sec. 7, Part 1, Ch. 82, L. 1937; amd. Sec. 2, Ch. 199, L. 1951; amd. Sec. 1, Ch. 72, L. 1957; amd. Sec. 20, Ch. 121, L. 1974; amd. Sec. 13, Ch. 37, L. 1977; R.C.M. 1947, 71-210; amd. Sec. 1, Ch. 199, L. 1979; amd. Sec. 1, Ch. 511, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "licensing of all children's foster family homes, group homes, child-care agencies, and child-placing agencies" for "licensing and supervising of private and local child-caring agencies" in (1)(b)(ii); substituted present subsection (1)(b)(iii) for former subsection (1)(b)(iii), which read: "(iii) the care of dependent, neglected, and delinquent children in foster family homes, especially children placed for adoption or those of illegitimate birth"; and inserted subsection (1)(b)(iv).

Spouse Abuse: Chapter 499, L. 1979, provides that the department collect statistics relating to domestic violence and spouse abuse until July 1, 1983.

Statement of Intent: The statement of intent attached to Ch. 199, L. 1979, provided: "A statement of intent is required for this bill in that it delegates authority to adopt rules in sections 1 through 4.

1. Under present law, SRS has express rulemaking authority to carry out most of its duties under Title 53. The Department's present authority includes the power to adopt rules to implement and carry out the following: child welfare services; Aid to Dependent Children programs; subsidized adoption; protective services for adults; Medical Assistance programs; sheltered workshop programs; community based services; community homes and protective services for the developmentally disabled; and vocational rehabilitation programs.

2. While there are duties for which SRS has express rulemaking authority, there also are duties for which the Department's rulemaking authority could only be implied. The Montana Administrative Procedure Act, Section 2-4-102(11)(a), MCA, requires that substantive rules be adopted under express authority in order to be valid. Under an agreement with the Administrative Code Committee, SRS introduced legislation to eliminate this gap in the Department's express authority. This bill gives SRS express rulemaking authority to adopt rules to comply with federal law; to carry out its responsibilities for public welfare; and to administer vocational rehabilitation for the blind.

3. The express authority given to SRS under this bill will allow the Department to adopt rules which cover the following areas: eligibility requirements for various services; scope of services to be offered; specific criteria that providers of services must meet to qualify as providers; how, when, and in what form various types of assistance will be offered; and procedure for applying for and receiving aid. The area of social services is a field which evolves as the needs of the population change. Federal programs and their concomitant regulations are constantly being revised and altered. This legislation allows SRS to adapt the specifics of its social services programs to meet those federal changes but within the confines of state law."

53-2-202. Attorney general to act as legal adviser to department. The attorney general of the state shall act as legal adviser to the department, shall perform such legal services as may be required, and may employ such other and additional counsel as may be necessary for this purpose and fix the compensation therefor.

History: En. Sec. 4, Part 1, Ch. 82, L. 1937; amd. Sec. 49, Ch. 121, L. 1974; amd. Sec. 12, Ch. 37, L. 1977; R.C.M. 1947, 71-207; amd. Sec. 2, Ch. 38, L. 1979.

53-2-203. Department to maintain merit system and supervise public assistance personnel. (1) The department shall:

(a) maintain a merit system pertaining to qualifications for appointment, terms of office, annual merit rating, releases, promotions, and salary schedules for all public assistance personnel; personnel standards shall conform as far as possible with general standards established or required by the federal government;

(b) have examinations held from time to time throughout the state to establish and furnish to county departments lists, in order of merit, of persons eligible for appointment;

(c) develop policies relating to educational leave of employees and to staff development needs;

(d) supervise the appointment, dismissal, and entire status of the public assistance personnel attached to county boards in accordance with the merit system.

(2) All public assistance personnel shall be residents of this state unless it is impossible to find residents of this state possessing qualifications required by the merit system. If possible, county assistance personnel shall be residents of the county in which they work.

History: En. 71-210.1 by Sec. 21, Ch. 121, L. 1974; R.C.M. 1947, 71-210.1.

53-2-204. Department authorized to provide and set standards for supplementary payments. (1) The department shall have the authority to provide supplementary payments from state funds to recipients of supplemental security income for the aged, blind, or disabled under Title XVI of the Social Security Act of the United States or any future amendments thereto.

(2) The department shall have the authority to establish standards of assistance and apply them uniformly throughout the state and to determine individuals eligible for and the amount of such supplementary payments under federal and state guidelines.

History: (1)En. 71-210.2 by Sec. 1, Ch. 358, L. 1974; Sec. 71-210.2, R.C.M. 1947; (2)En. 71-210.3 by Sec. 2, Ch. 358, L. 1974; Sec. 71-210.3, R.C.M. 1947; R.C.M. 1947, 71-210.2, 71-210.3.

53-2-205. Department authorized to establish and collect social services fees. (1) The department is authorized to establish and collect fees for social services furnished which are authorized pursuant to Title XX of the Social Security Act, Public Law 93-647. Such fees shall be based on a schedule determined by the department.

(2) The state share of fees provided by subsection (1) shall be paid to the state treasurer for the credit of the earmarked revenue fund for the use of the department in providing social services.

History: En. 71-210.4, 71-210.5 by Secs. 1, 2, Ch. 206, L. 1975; R.C.M. 1947, 71-210.4, 71-210.5; amd. Sec. 3, Ch. 38, L. 1979.

53-2-206. Department to act as agent of federal government. The department shall act as the agent of the federal government in public assistance matters of mutual concern in conformity with this title and the federal Social Security Act and in the administration of any federal funds granted to the state to aid in the purposes and functions of the department.

History: En. Subd. (h), Sec. 7, Part 1, Ch. 82, L. 1937; amd. Sec. 3, Ch. 129, L. 1939; amd. Sec. 1, Ch. 219, L. 1947; amd. Sec. 3, Ch. 199, L. 1951; amd. Sec. 1, Ch. 141, L. 1953; amd. Sec. 12, Ch. 212, L. 1965; amd. Sec. 17, Ch. 325, L. 1967; amd. Sec. 4, Ch. 261, L. 1971; amd. Sec. 14, Ch. 37, L. 1977; R.C.M. 1947, 71-211(1).

53-2-207. Power of department in administering state grants-in-aid. In administering or supervising any state or federal funds appropriated or made available to the department for public assistance purposes, the department shall have the authority to:

(1) require as a condition for receiving grants-in-aid that the county shall bear the proportion of the total of local public assistance as is fixed by law relating to such assistance;

(2) make use of all legal processes to enforce the minimum standards prescribed by the department under laws providing for grants-in-aid, provided that such standards shall not exceed in cost the amount derived from levies established by state law; and

(3) require that each part of the public assistance laws shall be in effect in all counties of the state.

History: En. Sec. 8, Part 1, Ch. 82, L. 1937; amd. Sec. 15, Ch. 37, L. 1977; R.C.M. 1947, 71-212.

Part 3

County Departments of Public Welfare

53-2-301. County departments to be established. There shall be established in each county of the state a county department of public welfare which shall consist of a county board of public welfare and such staff personnel as may be necessary for the efficient performance of the public assistance activities of the county. If conditions warrant and if two or more county boards enter into an agreement, two or more counties may combine into one administrative unit and use the same staff personnel throughout the administrative unit.

History: En. Subd. (a), Sec. 9, Part 1, Ch. 82, L. 1937; amd. Sec. 16, Ch. 37, L. 1977; R.C.M. 1947, 71-213.

53-2-302. County commissioners ex officio county welfare board. The board of county commissioners shall be the ex officio county welfare board and is hereby authorized to devote such additional time for public assistance matters as may be found necessary. The members of the county welfare board shall receive the same compensation for their services and the same mileage when acting as the county board of public welfare as they receive when acting as the board of county commissioners and shall be limited as to meetings as now provided by law, and the compensation and mileage of the members of the board shall be paid from county funds. They may transact business as a board of county commissioners and as a county welfare board on the same day, and in such cases they shall be paid as a board of county commissioners but may not receive compensation for more than 1 day's work for all services performed on the same calendar day.

History: En. Subd. (b), Sec. 9, Part 1, Ch. 82, L. 1937; amd. Sec. 4, Ch. 129, L. 1939; amd. Sec. 17, Ch. 37, L. 1977; R.C.M. 1947, 71-214.

53-2-303. County attorney and clerk — ex officio duties. The county attorney shall be, ex officio, the legal adviser to the county welfare board and shall render such legal services as the county department may require. The county clerk and recorder shall be, ex officio, the secretary and clerk of the county welfare board.

History: En. Subd. (c), Sec. 9, Part 1, Ch. 82, L. 1937; R.C.M. 1947, 71-215.

53-2-304. Staff personnel of county department. (1) Each county board shall select and appoint from a list of qualified persons furnished by the department of social and rehabilitation services such staff personnel as are necessary. The staff personnel in each county shall consist of at least one qualified staff worker (or investigator) and such clerks and stenographers as may be decided necessary. If conditions warrant, the county board, with the approval of the department of social and rehabilitation services, may appoint some fully qualified person listed by the department as supervisor of its staff personnel. The staff personnel of each county department are directly responsible to the county board, but the department of social and rehabilitation services may supervise such county employees in respect to the efficient and proper performance of their duties. The county board of public welfare may not dismiss any member of the staff personnel without the approval of the department of social and rehabilitation services, but the department may request the county board to dismiss any member of the staff personnel for inefficiency, incompetence, or similar cause.

(2) Public assistance staff personnel attached to the county board shall be paid from state public assistance funds both their salaries and their travel expenses as provided for in 2-18-501 through 2-18-503 when away from the county seat in the performance of their duties, but the county board of public welfare shall reimburse the department of social and rehabilitation services from county poor funds the full amount of the salaries and travel expenses not reimbursed to the department by the federal government and the full amount of the department's administrative costs which are allocated by the department to the county for the administration of county welfare programs and not reimbursed to the department by the federal government. Under circumstances prescribed by the department of social and rehabiliation services, the reimbursement by the county board of public welfare may be less than the county share as prescribed above. All other administrative costs of the county department shall also be paid from county poor funds.

(3) On or before the 20th day of the month following the month for which the payments to the public assistance staff personnel of the county were made, the department of social and rehabilitation services shall present to the county department of public welfare a claim for the required reimbursements. The county board shall make such reimbursements within 20 days after the presentation of the claim, and the department of social and

rehabilitation services shall credit (add) all such reimbursements to its account for administrative costs.

History: **En. Subd. (b), Sec. 10, Part 1, Ch. 82, L. 1937; amd. Sec. 5, Ch. 129, L. 1939; amd. Sec. 1, Ch. 44, L. 1963; amd. Sec. 50, Ch. 121, L. 1974; amd. Sec. 48, Ch. 439, L. 1975; amd. Sec. 19, Ch. 37, L. 1977; amd. Sec. 1, Ch. 109, L. 1977; R.C.M. 1947, 71-217.**

53-2-305. County departments under supervision of department. County departments are under the supervision of the department of social and rehabilitation services and subject to audit by the department.

History: **En. Subd. (c), Sec. 10, Part 1, Ch. 82, L. 1937; amd. Sec. 6, Ch. 129, L. 1939; amd. Sec. 22, Ch. 121, L. 1974; R.C.M. 1947, 71-218.**

53-2-306. County department charged with local administration of public assistance. The county department of public welfare shall be charged with the local administration of all forms of public assistance operations in the county, including but not limited to food stamp programs and social services programs. All such local administration must conform to federal and state law and the rules as established by the department of social and rehabilitation services.

History: **En. Subd. (a), Sec. 11, Part 1, Ch. 82, L. 1937; amd. Sec. 5, Ch. 199, L. 1951; amd. Sec. 1, Ch. 201, L. 1975; R.C.M. 1947, 71-221.**

53-2-307. County board to establish local administrative policies and rules. The county board of public welfare is responsible for establishing local policies and such rules as are necessary to govern the county department and local administration of public assistance activities, except that all such policies and rules must be in conformity with general policies and rules established by the department of social and rehabilitation services.

History: **En. Subd. (a), Sec. 10, Part 1, Ch. 82, L. 1937; amd. Sec. 4, Ch. 199, L. 1951; amd. Sec. 13, Ch. 212, L. 1965; amd. Sec. 50, Ch. 121, L. 1974; amd. Sec. 18, Ch. 37, L. 1977; R.C.M. 1947, 71-216(part).**

53-2-308. When one-year contracts must be made. Whenever under existing laws the board of county commissioners is authorized to make contracts for 1 year and no time is specified when the contracts shall be made, it shall be the duty of the county commissioners whenever possible to make such contracts in the month of June of each year so that they will be better enabled to prepare their budget which, under existing laws, must be prepared during the month of July.

History: **En. Sec. 4, Ch. 131, L. 1943; R.C.M. 1947, 71-111(part).**

53-2-309. Bond required of certain contractors. A person with whom a contract for the maintenance or medical attendance of the poor or indigent sick is made must execute a bond to the state in a sum not less than $1,000 or more than $5,000, with two or more sureties, conditioned for the faithful performance of his contract. The bond is to be approved by and filed with the chairman of the board.

History: **En. Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.; re-en. Secs. 1, 2 and 4, p. 535, Cod. Stat. 1871; Sec. 9, p. 54, L. 1876; re-en. Sec. 963, 5th Div. Rev. Stat. 1879; re-en. Sec. 1617, 5th Div. Comp. Stat. 1887; re-en. Sec. 3208, Pol. C. 1895; re-en. Sec. 2058, Rev. C. 1907; re-en. Sec. 4529, R.C.M. 1921; re-en. Sec. 4529, R.C.M. 1935; amd. Sec. 11, Ch. 37, L. 1977; R.C.M. 1947, 71-113(part).**

53-2-310. Duty of contracting physician. The physician with whom a contract for medical attendance is made shall each week examine any person who is a charge upon the county, and if after the examination he is satisfied that the person is able to support and maintain himself, he must notify the contractor having the person in charge by leaving with the contractor a notice of the fact that the person requires no further medical attendance. He shall file a duplicate notice with the clerk of the board. After the physician serves the notice and files the duplicate with the clerk, the person mentioned therein ceases to be a charge upon the county.

History: En. Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.; re-en. Secs. 1, 2 and 4, p. 535, Cod. Stat. 1871; Sec. 9, p. 54, L. 1876; re-en. Sec. 963, 5th Div. Rev. Stat. 1879; re-en. Sec. 1617, 5th Div. Comp. Stat. 1887; re-en. Sec. 3208, Pol. C. 1895; re-en. Sec. 2058, Rev. C. 1907; re-en. Sec. 4529, R.C.M. 1921; re-en. Sec. 4529, R.C.M. 1935; amd. Sec. 11, Ch. 37, L. 1977; R.C.M. 1947, 71-113(part).

53-2-311 through 53-2-320 reserved.

53-2-321 amend. spec. sess. SEE: V. 1, MCA Ann

53-2-321. County authorized to care for indigent and levy taxes therefor. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law to provide for the care and maintenance of the indigent sick, except as otherwise provided in other parts of this title, or the otherwise dependent poor of the county; erect and maintain hospitals therefor or otherwise provide for the same; and for said purposes to levy and collect annually a tax on property not exceeding 13 ½ mills, which levy shall be made at the time other tax levies are made on property, as provided by law.

History: En. Subd. 5, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.4, R.C.M. 1935; amd. Sec. 1, Ch. 165, L. 1941; amd. Sec. 1, Ch. 23, L. 1943; amd. Sec. 11, Ch. 212, L. 1965; amd. Sec. 1, Ch. 69, L. 1967; amd. Sec. 2, Ch. 279, L. 1974; R.C.M. 1947, 71-106.

53-2-322. County to levy taxes, budget, and make expenditures for public assistance activities. (1) The board of county commissioners in each county shall levy 13.5 mills for the county poor fund as provided by law or so much thereof as may be necessary. The board shall budget and expend so much of the funds in the county poor fund for public assistance purposes as will enable the county welfare department to pay the general relief activities of the county and to reimburse the department of social and rehabilitation services for the county's proportionate share of the administrative costs of the county welfare department and of all public assistance and its proportionate share of any other public assistance activity that may be carried on jointly by the state and the county.

(2) The amounts set up in the budget for the reimbursements to the department of social and rehabilitation services shall be sufficient to make all of these reimbursements in full. The budget shall make separate provision for each one of these public assistance activities, and proper accounts shall be established for the funds for all such activities.

(3) As soon as the preliminary budget provided for in 7-6-2315 has been agreed upon, a copy thereof shall without delay be mailed to the department of social and rehabilitation services, and at any time before the final adoption of the budget, the department shall make such recommendations with regard to changes in any part of the budget relating to the county poor fund

as considered necessary in order to enable the county to discharge its obligations under the public assistance laws.

(4) The department of social and rehabilitation services shall promptly examine the preliminary budget in order to ascertain if the amounts provided for reimbursements to the department are likely to be sufficient and shall notify the county clerk of its findings. The board shall make such changes in the amounts provided for reimbursements, if any are required, in order that the county will be able to make the reimbursements in full.

(5) The board of county commissioners may not make any transfer from the amounts budgeted for reimbursing the department of social and rehabilitation services without having first obtained a statement in writing from the department to the effect that the amount to be transferred will not be required during the fiscal year for the purposes for which the amounts were provided in the budget.

(6) No part of the county poor fund, irrespective of the source of any part thereof, may be used directly or indirectly for the erection or improvement of any county building so long as the fund is needed for general relief expenditures by the county or is needed for paying the county's proportionate share of public assistance or its proportionate share of any other public assistance activity that may be carried on jointly by the state and the county. Expenditures for improvement of any county buildings used directly for care of the poor may be made out of any moneys in the county poor fund, whether such moneys are produced by the 13.5-mill levy provided for in subsection (1) of this section or from any additional levy authorized or to be authorized by law. Such expenditure shall be authorized only when any county building used for the care of the poor must be improved in order to meet legal standards required for such buildings by the department of health and environmental sciences and when such expenditure has been approved by the department of social and rehabilitation services.

History: En. Subd. (b), Sec. 11, Part 1, Ch. 82, L. 1937; amd. Sec. 8, Ch. 129, L. 1939; amd. Sec. 3, Ch. 117, L. 1941; amd. Sec. 6, Ch. 199, L. 1951; amd. Sec. 1, Ch. 239, L. 1963; amd. Sec. 2, Ch. 69, L. 1967; amd. Sec. 23, Ch. 121, L. 1974; amd. Sec. 20, Ch. 37, L. 1977; R.C.M. 1947, 71-222.

53-2-323. Grants from state funds to counties. A county may apply to the department for an emergency grant-in-aid, and the grant shall be made to the county upon the following conditions:

(1) The board of county commissioners or a duly elected or appointed executive officer of the county shall make written application to the department for emergency assistance and shall show by written report and sworn affidavit of the county clerk and recorder and chairman of the board of county commissioners or other duly elected or appointed executive officer of the county the following:

(a) that the county will not be able to meet its obligations under law to provide assistance to the needy of the county or meet its proportionate share of any public assistance activity carried on jointly with the department;

(b) that all lawful sources of revenue and other income to the county poor fund will be exhausted;

(c) that all expenditures from the county poor fund have been lawfully made; and

(d) that all expenditures from the county poor fund have been reasonable and necessary, according to criteria set by the department in rules adopted for that purpose, for the county to meet its obligations under law to provide assistance to the needy.

(2) Within 10 days of receipt of the application and affidavit, the department shall determine whether the county poor fund will be depleted and shall give notice to the county of the department's intention to deny or allow the grant-in-aid. Before a grant-in-aid for any fiscal year may be made to a county under this section, any money credited during that fiscal year to the depletion allowance reserve fund from the sources provided by 7-34-2402(2) shall be transferred to the county poor fund to be used for lawful poor fund expenditures. The amount of the grant-in-aid shall be determined after all sources of income available to the poor fund, including the depletion allowance reserve fund transfers, have been exhausted.

(3) Within 10 days of receiving notice from the department that a grant-in-aid will be made to the county, the board of county commissioners or other duly elected or appointed executive officer of the county shall adopt an emergency budget. There is no requirement of notice and hearing for that emergency budget. The emergency budget shall state the amount required to meet the obligation of the county and shall allocate that whole amount among the various classes of expenditures for which the grant was made.

(4) Upon receipt and approval of the county emergency budget, the department shall issue a warrant to the county treasurer of the county for the total amount stated in the approved emergency budget.

(5) The grant-in-aid received by the county shall be placed in an emergency fund account to be kept separate and distinct from the poor fund account. All expenditures from the emergency fund account shall be made by a separate series of warrants or checks marked as emergency warrants or checks.

(6) The grants-in-aid from the department may be used only for public assistance activities lawfully conducted by the county, including but not limited to medical aid, hospitalization, and institutional care. No part of a grant-in-aid may be used, directly or indirectly, to pay for the erection or improvement of any county building or for furniture, fixtures, appliances, or equipment for a county building.

(7) In the event the county poor fund is replenished by other lawful sources of revenue, the county shall issue warrants to meet its obligations from the county poor fund until such time as that fund is again so depleted that warrants can no longer lawfully be drawn on that account. Upon depletion of the county poor fund, the county may again make disbursements from the emergency fund account as provided in subsection (5). At the close of the county fiscal year, the county shall return to the department any amounts remaining in the county poor fund and the emergency fund account, but the remaining amount to be returned may not exceed the total amount of the emergency grant-in-aid for that fiscal year.

(8) Any amount which is unlawfully disbursed or transferred from the emergency fund account or used for a purpose other than that specified in the grant-in-aid shall be returned by the county to the department.

History: Ap. p. Sec. 9, Part 2, Ch. 82, L. 1937; amd. Sec. 14, Ch. 129, L. 1939; amd. Sec. 7, Ch. 117, L. 1941; amd. Sec. 11, Ch. 199, L. 1951; amd. Sec. 50, Ch. 121, L. 1974; amd. Sec. 31, Ch. 37, L. 1977; amd. Sec. 1, Ch. 168, L. 1977; Sec. 71-311, R.C.M. 1947; Ap. p. 16-1043 by Sec. 2,

Ch. 365, L. 1975; Sec. 16-1043, R.C.M. 1947; R.C.M. 1947, 16-1043(1)(c), 71-311; amd. Sec. 1, Ch. 400, L. 1981.

Compiler's Comments

1981 Amendment: Rewrote subsection (1)(d) by deleting "any other information required by the department" and inserting language relating to department rules as to reasonable and necessary expenditures.

Statement of Intent: The statement of intent attached to HB 291 (Ch. 400, L. 1981) provided: "A Statement of Intent is required for this bill because it gives the department of social and rehabilitation services the authority to set criteria by which it will determine if expenditures from the county poor fund are reasonable and necessary if the county is applying for a grant-in-aid. Grants-in-aid are mandatory if the county is spending over the 13.5 poor fund mill levy and if the present law is followed. Since grants-in-aid are paid entirely with state general fund monies, the state has an interest in determining the reasonableness and necessity of expenditures which led up to the grant-in-aid request.

Counties which levy less than the statutory limit of 13.5 mills would not be subject to these criteria.

The present statute requires that expenditures be lawful, but it does not reference necessity. It requires counties seeking grants-in-aid to furnish information but does not give the department authority to take action based on that information. The proposed change would give the department the authority to act as a prudent person to insure the reasonableness and necessity of expenditures.

Criteria will be set through the rulemaking process setting forth the areas in which the department could determine reasonableness and necessity. These criteria will be stated as simply as possible in the following areas: staffing patterns required by caseload size, necessity of county medical costs as consistent with Medicaid reimbursement rates, consultants and contracted services based on policies followed by state agencies, and costs which are legally payable from other sources."

Part 4

Liability of Applicant's Relatives (Repealed. Sec. 1, Ch. 310, L. 1981)

Part Compiler's Comments

Histories of Repealed Sections:

53-2-401. En. Sec. 1, Ch. 180, L. 1953; amd. Sec. 50, Ch. 121, L. 1974; R.C.M. 1947, 71-233.

53-2-402. En. Sec. 2, Ch. 180, L. 1953; amd. Sec. 49, Ch. 121, L. 1974; R.C.M. 1947, 71-234.

53-2-403. En. Sec. 3, Ch. 180, L. 1953; amd. Sec. 1, Ch. 98, L. 1973; amd. Sec. 2, Ch. 379, L. 1977; R.C.M. 1947, 71-235(1), (3), (4), (5).

53-2-404. En. Sec. 4, Ch. 180, L. 1953; amd. Sec. 49, Ch. 391, L. 1973; amd. Sec. 49, Ch. 121, L. 1974; R.C.M. 1947, 71-236.

53-2-405. En. Sec. 5, Ch. 180, L. 1953; amd. Sec. 49, Ch. 121, L. 1974; R.C.M. 1947, 71-237.

53-2-406. En. Sec. 6, Ch. 180, L. 1953; R.C.M. 1947, 71-238.

53-2-407. En. Sec. 7, Ch. 180, L. 1953; amd. Sec. 49, Ch. 121, L. 1974; R.C.M. 1947, 71-239.

53-2-408. En. Sec. 8, Ch. 180, L. 1953; amd. Sec. 49, Ch. 121, L. 1974; R.C.M. 1947, 71-240.

Part 5

Investigations by Department of Revenue

53-2-501. Investigations and enforcement actions by department of revenue. When requested by the department of social and rehabilitation services, the department of revenue shall:

(1) investigate matters relating to public assistance and vendor payments, including but not limited to the claim for an acceptance of public assistance benefits by public assistance recipients and the receipt and disbursal of public assistance funds by state, county, or other governmental agencies;

(2) institute civil or criminal actions in the appropriate courts to enforce the public assistance laws and violations thereof.

History: En. Sec. 1, Ch. 295, L. 1973; amd. Sec. 23, Ch. 37, L. 1977; R.C.M. 1947, 71-233.1.

53-2-502. Cooperation of governmental agencies with department of revenue. All state departments and agencies and county or other governmental agencies shall cooperate with the department of revenue and its employees to effectuate the purpose of this part.

History: En. Sec. 2, Ch. 295, L. 1973; R.C.M. 1947, 71-233.2.

53-2-503. Information made available to department of revenue. (1) The department of social and rehabilitation services and its local units shall make available to the department of revenue information contained in the public assistance files pertinent to the investigations and judicial actions described in 53-2-501.

(2) Every other state, county, or other governmental agency shall make available to the agents or attorneys of the department of revenue all records, files, memoranda, forms, or other papers relating to public assistance matters, including income tax returns filed with the department of revenue.

History: En. Sec. 3, Ch. 295, L. 1973; amd. Sec. 24, Ch. 37, L. 1977; R.C.M. 1947, 71-233.3.

53-2-504. Unauthorized disclosure of information obtained in department of revenue investigations a criminal act. (1) No information obtained by the department of revenue or its agents and attorneys as a result of an investigation shall be disclosed except in accordance with the laws applicable to the source of information, provided, however, such information may be used or disclosed as necessary in any court action.

(2) Each employee violating the disclosure provisions shall be subject to the criminal charge and penalties applicable to the source of information.

History: En. Sec. 4, Ch. 295, L. 1973; R.C.M. 1947, 71-233.4.

Part 6

Grants of Assistance and Liability Therefor — Appeals

53-2-601. Eligibility determination — rules on fraudulent transfer of property. The department may deny public assistance to any person who has divested himself directly or indirectly of any property for the purpose of qualifying for public assistance. The department shall make rules that raise a rebuttable presumption that any transfer of property for less than fair market value within 2 years of the date of application for public assistance was for the purpose of qualifying for public assistance.

History: En. Sec. 1, Ch. 228, L. 1953; amd. Sec. 1, Ch. 327, L. 1969; amd. Sec. 50, Ch. 121, L. 1974; R.C.M. 1947, 71-242(part); amd. Sec. 1, Ch. 383, L. 1981.

Compiler's Comments

1981 Amendment: Extended the presumption to all property; reduced the period of applicability from 5 to 2 years; inserted the rulemaking authority; and generally rewrote the section.

Statement of Intent: The statement of intent attached to HB 96 (Ch. 383, L. 1981) provided: "Under present law, SRS has express rulemaking authority to adopt rules to cover eligibility requirements for various services. Federal regulations concerning eligibility allow the state various options when considering transfer of property. The department needs to have the authority to redetermine from time to time which option offers the most efficient and least costly system of determining eligibility to the state."

53-2-602. Grants-in-aid based on need. Subject to review by the county board, the staff of the county department shall determine grants and changes in grants, based on the needs of each applicant, after investigation in accordance with the rules and standards of assistance prescribed by the department of social and rehabilitation services. In determining the amount of grants, casual, periodic, or occasional income shall not be deducted from the grant nor shall such income render a recipient ineligible for assistance unless such income equals or exceeds the monthly assistance grant of the recipient.

History: En. Subd. (d), Sec. 10, Part 1, Ch. 82, L. 1937; amd. Sec. 7, Ch. 129, L. 1939; amd. Sec. 1, Ch. 98, L. 1951; R.C.M. 1947, 71-219.

53-2-603. Award of public assistance determined after investigation. (1) Upon completion of the investigation, the county board shall determine whether the applicant is eligible for public assistance under the provisions of this title, the type and amount of public assistance he shall receive, and the date upon which such public assistance shall begin.

(2) The department, if necessary to conform with the United States Social Security Act, may issue rules to the county welfare departments requiring the use of the declaration method, in such form as the department may prescribe, for the purpose of determining eligibility, regardless of any other investigative provisions under this title, and for all types of assistance. These rules may include any additional investigations the department may require.

History: En. Sec. 1, Ch. 228, L. 1953; amd. Sec. 1, Ch. 327, L. 1969; amd. Sec. 50, Ch. 121, L. 1974; R.C.M. 1947, 71-242(part).

53-2-604. Signatures required on approved or denied applications. Approved or denied applications for assistance under this title shall be signed by the chairman and one other member of the county board. In the event that the department may require all such actions to be reviewed and receive the final approval or disapproval of the department, the department shall designate certain executive officers of the department who shall sign such department approvals or disapprovals.

History: En. Sec. 16, Part 1, Ch. 82, L. 1937; amd. Sec. 50, Ch. 121, L. 1974; R.C.M. 1947, 71-227.

53-2-605. Review of eligibility determinations by county board. The county board of public welfare shall review the determinations of eligibility and amount of payment to or on behalf of individuals made by the staff of the county department for conformity with the rules authorized by 53-2-307. Determinations not in conformity will be referred to the staff by the county welfare board for appropriate action as authorized by the board.

History: En. Subd. (a), Sec. 10, Part 1, Ch. 82, L. 1937; amd. Sec. 4, Ch. 199, L. 1951; amd. Sec. 13, Ch. 212, L. 1965; amd. Sec. 50, Ch. 121, L. 1974; amd. Sec. 18, Ch. 37, L. 1977; R.C.M. 1947, 71-216(part).

53-2-606. Right of appeal. (1) If an application for assistance under this title is not acted upon promptly or if a decision is made with which the applicant or recipient is not satisfied, he may appeal to the board of social and rehabilitation appeals for a fair hearing by addressing a request for a hearing to the department. The board of social and rehabilitation appeals shall, upon receipt of a request for a hearing, give the applicant or recipient prompt notice and opportunity for a fair hearing. A county welfare board which is involved in a grievance shall be represented at such a hearing.

(2) The department may upon its own motion review any decision of a county welfare board and may consider any application upon which a decision has not been made by the county board within a reasonable time from the filing thereof. The department may have an additional investigation made and shall make a decision as to the granting of assistance and the amount of assistance to be granted the applicant as in its opinion is justified and in conformity with the provisions of this title.

(3) If the department reviews a county decision on its own motion, applicants or recipients affected by the decisions of the department shall upon request be given reasonable notice and an opportunity for a fair hearing by the board of social and rehabilitation appeals.

(4) All decisions of the department or the board of social and rehabilitation appeals are final and are binding and shall be complied with by the county department.

History: **En. Sec. 12, Part 1, Ch. 82, L. 1937; amd. Sec. 7, Ch. 199, L. 1951; amd. Sec. 1, Ch. 24, L. 1953; amd. Sec. 24, Ch. 121, L. 1974; R.C.M. 1947, 71-223.**

53-2-607. Assistance not assignable or subject to legal process. Except as otherwise provided in this title, assistance granted under this title is not transferable or assignable at law or in equity and none of the money paid or payable under this title is subject to execution, levy, attachment, garnishment, or other legal process or to the operation of any bankruptcy or insolvency law.

History: **En. Sec. 18, Part 1, Ch. 82, L. 1937; amd. Sec. 26, Ch. 121, L. 1974; R.C.M. 1947, 71-229.**

53-2-608. Method of issuing assistance grants. (1) Checks in payment of public assistance, with the exception of general relief, shall be issued by the department of social and rehabilitation services upon approved certificates of award and reports of changes of such eligible grantees as are forwarded by the county department to the state department, and all such checks will be mailed to the individual recipient or the appropriate vendor. The checks in payment of public assistance shall be issued in the full approved amount for each eligible approved grantee, and the original monthly payment shall be from the state public assistance accounts. All public assistance checks shall represent cash on demand at full par value to the recipient and vendor.

(2) Whenever the department of social and rehabilitation services, acting pursuant to standards established by the department, determines that any otherwise eligible recipient of public assistance has, by reason of any physical or mental condition, such inability to manage funds that making payments to him would be contrary to his welfare, the department may, under standards established under the state plan, make the public assistance payment

on behalf of such recipient to another person found by the department to be interested in or concerned with the welfare of such needy individual.

History: En. Sec. 19, Part 1, Ch. 82, L. 1937; amd. Sec. 1, Ch. 71, L. 1957; amd. Sec. 14, Ch. 212, L. 1965; amd. Sec. 1, Ch. 244, L. 1969; amd. Sec. 49, Ch. 121, L. 1974; amd. Sec. 22, Ch. 37, L. 1977; R.C.M. 1947, 71-230(1), (2); amd. Sec. 1, Ch. 398, L. 1981.

Compiler's Comments

1981 Amendment: Changed "old age assistance aid to the needy blind, or aid to the permanently and totally disabled" to "public assistance" in the first sentence of (2); deleted bond requirement for persons who are protective payees for recipients of public assistance from the end of (2).

Statement of Intent: The statement of intent attached to HB 80 (Ch. 398, L. 1981) provided: "Although a statement of intent is not specifically needed for this bill, the legislature felt that it was necessary to express its intention regarding the handling of protective payees for those recipients of public assistance who need aid in handling their finances. Because this bill removes the bonding requirement for protective payees, it was felt to be necessary to give some guidance on the handling of protective payees. The attached draft has been approved as a suitable approach to the protective payee situation. It is intended that SRS handle protective payees as described in the attached draft or in a manner substantially similar.

AFDC PROGRAM PROTECTIVE PAYEE

A protective payee program is established to assure that AFDC payments are used in a manner consistent with the purpose of assistance in providing for the best interest of the child/children. Montana SRS would establish the following procedure to administer the protective payee program:

1. Establish Need — When there is documented evidence that a caretaker mismanages funds and that the needs of the child are not consistently met, a protective payee may be established.

2. Selection of Payee — The protective payee must be reliable and capable of managing household funds.

Restrictions — The payee can be a family member, friend or staff member of a community or department agency. Ineligible persons would be ET staff, vendors of goods or services dealing directly with the client and specific restricted personnel of the agency. Those restricted include County Commissioners, executive heads of public welfare departments, special investigative or resource staff, staff handling fiscal processes and landlords.

Selection of Payee — The recipient may participate in the selection of the payee, following the selection criteria.

A contractual agreement shall be entered into between the payee and the county outlining the duties and responsibilities of each.

3. Monitor of Payee — The Department shall establish within reasonable guidelines, the method in which the payee shall carry out his responsibilities. Shelter, food and personal need of payment shall be provided in a manner designed to best meet the needs of the recipient.

A record of payments shall be kept on a regular basis by the payee. This record shall be accessible to the Department for review as frequently as indicated by circumstances, but at least every three months. The review shall specifically address the continuing need for a protective payee, and the way the responsibilities are being carried out.

4. Termination of Protective Payee — Termination shall occur when:

a. The caretaker is determined able to assume management of funds.

b. It appears that the protective payee arrangement likely will continue beyond two years. Judicial appointment of a guardian shall be sought.

5. Fair Hearing — Opportunity for a Fair Hearing shall be given to an individual who requests it as a result of any protective payee procedure.

A contractual agreement between the County Welfare Department and protective payee would be made. That agreement would designate the payee, the recipient, and the responsibilities and duties of both the payee and County Welfare Department. A statement would be included designating the payee's understanding of his personal liability in the event of irresponsible actions taken in the role of the payee.

PROTECTIVE PAYEE AGREEMENT

I, ____________________, hereby agree to accept the responsibilities and duties of Protective Payee for ____________________ until such time as I am relieved of said duties.

By signing this agreement I understand that my duties include providing for the shelter, food, and personal needs of ____________________ by properly disbursing the funds provided by the AFDC payment provided by The Montana State Department of Social and Rehabilitation Services.

I further acknowledge that my responsibilities include maintaining a regular record of receipts and method of disbursement to be available to the (county) Department of Public Welfare for review.

I understand that improperly exercising the responsibilities of Protective Payee shall result in the penalties as included in ____________________ MCA.

(SEAL)

____
Signature

____
Date"

53-2-609. Revocation of assistance. If the county department or department of social and rehabilitation services has reason to believe, by reason of a complaint or otherwise, that public assistance under this title has been improperly granted, it shall have an investigation made. If it appears as a result of an investigation that the assistance was improperly granted, the department of social and rehabilitation services shall notify the county department that no further payments shall be authorized for such recipient. The right of appeal is granted recipients whose assistance has been revoked.

History: **En. Sec. 17, Part 1, Ch. 82, L. 1937; amd. Sec. 25, Ch. 121, L. 1974; R.C.M. 1947, 71-228.**

53-2-610. County to reimburse department. (1) On or before the 20th of each month, the department of social and rehabilitation services shall present a claim for reimbursement to each county department for its proportionate share of public assistance granted in the county to recipients during the month and for vendor medical payments made on behalf of recipients in the previous month. The county department shall make the reimbursement to the department of social and rehabilitation services within 20 days after the claim is presented.

(2) The counties shall not be required to reimburse the department of social and rehabilitation services for any portion of old-age assistance, medical assistance, aid to needy dependent children, aid to needy blind, or aid to the totally disabled paid to ward Indians or for any payment on behalf of any person in a state-operated medical institution. The federal government may reimburse the state of Montana in behalf of counties providing general relief to ward Indians a sum in lieu of taxes which the counties would collect if the lands of such ward Indians were not in trust status.

(3) (a) From the original date of entrustment or the original date of state residency, whichever is earlier, recipients of public assistance who become wards or patients in a licensed nursing home or hospital, foster home, or private charitable institution shall be the financial responsibility of the appropriate county as provided in subsections (3)(b), (3)(c), and (3)(d) of this section.

(b) The county in which commitment of an adult is initiated is considered the county of financial responsibility except where court decree declares the residency to be otherwise. When an adult is transferred from a facility or institution to one of the above-enumerated facilities, the county which initiated the original commitment is considered the county of financial responsibility except in the case of an adult transfer from an out-of-state institution, in which case the county in which the facility is located is considered the county of financial responsibility.

(c) In all cases where a minor patient or ward is involved, the county of financial responsibility is the county in which the parent or guardian resides. If the custody of a minor is entrusted to a state agency, the agency may make a reasonable declaration of the county residency of its ward using applicable guidelines enumerated in this section.

(d) If a person is or becomes an adult while in an institution, he may determine his own county of residence when he is restored to competency and released. Such a person becomes the financial responsibility of the new county of residence.

History: **(1)En. Sec. 19, Part 1, Ch. 82, L. 1937; amd. Sec. 1, Ch. 71, L. 1957; amd. Sec. 14, Ch. 212, L. 1965; amd. Sec. 1, Ch. 244, L. 1969; amd. Sec. 49, Ch. 121, L. 1974; amd. Sec. 22, Ch. 37,**

L. 1977; Sec. 71-230, R.C.M. 1947; (2)En. Subd. (h), Sec. 7, Part 1, Ch. 82, L. 1937; amd. Sec. 3, Ch. 129, L. 1939; amd. Sec. 1, Ch. 219, L. 1947; amd. Sec. 3, Ch. 199, L. 1951; amd. Sec. 1, Ch. 141, L. 1953; amd. Sec. 12, Ch. 212, L. 1965; amd. Sec. 17, Ch. 325, L. 1967; amd. Sec. 4, Ch. 261, L. 1971; amd. Sec. 14, Ch. 37, L. 1977; Sec. 71-211, R.C.M. 1947; (3)En. 71-302.2 by Sec. 1, Ch. 225, L. 1974; amd. Sec. 25, Ch. 37, L. 1977; Sec. 71-302.2, R.C.M. 1947; R.C.M. 1947, 71-211(part), 71-230(3), 71-302.2(3); amd. Sec. 1, Ch. 450, L. 1979.

53-2-611. Recovery from recipient's estate. (1) Upon the death of any recipient of public assistance other than aid to dependent children or general relief, the department shall execute and present a claim against the estate of such person within the time specified in the published notice to creditors in the estate matter for the total amount of assistance paid under this title, separately stating therein the amount of all assistance paid from and after July 1, 1953.

(2) The department shall not assert its claim during the lifetime and continued occupancy of any real estate of a deceased recipient's estate by the surviving spouse or dependent as a home or residence unless other claimants or persons shall have instituted proceedings for the probate of the estate of the deceased recipient, in which case the department shall file its claim hereunder.

(3) All sums recovered hereunder from any source shall be distributed to the county and to the general fund of the state of Montana as their interests may appear. If the federal law so requires, the federal government shall be entitled to a share of any amounts collected hereunder in proportion to the amounts which it has contributed to the grants recovered, and the amount due the United States shall be promptly paid by the department to the United States government.

History: (1), (2)En. Sec. 7, Ch. 228, L. 1953; amd. Sec. 2, Ch. 299, L. 1973; amd. Sec. 49, Ch. 121, L. 1974; Sec. 71-247, R.C.M. 1947; (3)En. Sec. 10, Ch. 228, L. 1953; amd. Sec. 49, Ch. 121, L. 1974; Sec. 71-250, R.C.M. 1947; R.C.M. 1947, 71-247, 71-250.

53-2-612. Subrogation and third party liability for certain benefits. (1) The department is subrogated to the right of each needy person who is a recipient of medical benefits under Title XIX or XX of the Social Security Act to recover damages or compensation from a third party to the extent necessary to reimburse the department for medical benefits paid to or on behalf of the needy person. Upon determination that a third party is liable for the medical expenses of a needy person under this section, the department shall immediately notify the third party of the subrogation.

(2) The department may, in the name of the needy person to whom or on whose behalf medical benefits have been paid and to whose rights the department has been subrogated, commence and prosecute to final conclusion any action which may be necessary to recover from a third party compensation or damages for medical costs incurred by the needy person. From the amount collected from legal proceedings or as a result of settlement, the department shall retain the full amount previously paid as medical benefits, allocating to the county and federal government a share proportionate to their contribution and, after deducting the costs of the proceeding, deliver the remainder to the needy person. The total amounts awarded as compensation for pain and suffering or which are punitive in nature shall be delivered

to the needy person. This section does not affect the needy person's right to initiate and prosecute to final conclusion an action for damages or compensation in his own name.

(3) A needy person who is a recipient of medical benefits or his legal representative shall notify the department of any action initiated or of any compromise or settlement agreed to by the needy person or his legal representative for the recovery of compensation or damages for medical expenses to which medical benefits have been applied. Notice shall be given by service upon the department of the legal instrument initiating the action or embodying the compromise or settlement.

(4) No portion of attorneys' fees may be withheld from the amount collected from legal proceedings or as a result of settlement which is due the department under subsection (1) without prior approval of the department.

(5) As used in this section, "third party" means an individual, institution, corporation, or public or private agency which is or may be liable to pay all or part of the medical cost of injury, disease, or disability of a needy person to which Title XIX or XX benefits have been applied and includes but is not limited to insurers, health service organizations, and those liable in tort.

History: **En. 71-241.1 by Sec. 1, Ch. 379, L. 1977; R.C.M. 1947, 71-241.1.**

53-2-613. Application for assistance — assignment of support rights. (1) Applications for public assistance, including but not limited to aid to dependent children and medical assistance, must be made to the county department of public welfare in the county in which the person is residing. The application shall be submitted, the manner and form prescribed by the department, and shall contain information required by the department.

(2) A person by signing an application for public assistance, assigns to the state, the department, and to the county welfare department all rights the applicant may have to support and medical payments from any other person in his own behalf or in behalf of any other family member for whom application is made.

(3) The assignment:

(a) is effective for both current and accrued support and medical obligations;

(b) takes effect upon a determination that the applicant is eligible for public assistance;

(c) remains in effect with respect to the amount of any unpaid support and medical obligation accrued under the assignment that was owed prior to the termination of public assistance to a recipient.

History: **En. Sec. 1, Ch. 79, L. 1981.**

Compiler's Comments

1981 Title: The title to Ch. 79, L. 1981 (SB 73), read: "An act to automatically assign support rights of persons applying for public assistance to the state, the department of social and rehabilitation services, and the county welfare department; and providing an immediate effective date."

Codification Instruction: Section 2, Ch. 79, L. 1981, provided: "Section 1 is intended to be codified as an integral part of Title 53, chapter 2, part 6, and the provisions of Title 53, chapter 2, apply to section 1."

Effective Date: Section 3, Ch. 79, L. 1981, provided: "This act is effective on passage and approval." Approved March 18, 1981.

Part 7

Work Experience and Training Program

Part Compiler's Comments

1981 Title: The title to Ch. 390, L. 1981 (HB 258), read: "An act to establish a work experience and training program to provide recipients of AFDC payments an opportunity to contribute their efforts to society in return for assistance received and to explore the feasibility of establishing such a program to include recipients of other forms of public assistance."

Statement of Intent: The statement of intent attached to HB 258 (Ch. 390, L. 1981) provided: "A statement of intent is required for this bill because it delegates rulemaking authority to the Department of Social and Rehabilitation Services and to the Department of Labor and Industry in section 7 [53-2-707].

It is intended that the Departments adopt rules similar to those used under the WIN program, unless the Departments determine that more efficient procedures can be established which do not interfere with obtaining federal funds in the maximum amount and most advantageous proportion possible.

It is the intent of subsection (2) of section 7 [53-2-707] that the Departments establish procedures for a recipient to prove qualification under the exemptions of section 4 [53-2-704].

It is the intent of subsection (3) of section 7 [53-2-707] that the Departments prescribe procedural rules for applications for project placement, time deadlines, attendance requirements for project participants, guidelines for lines of authority, and related personnel matters. The Departments should provide AFDC recipients with general information regarding the program's structure and the consequences of a person's refusal to participate in the program.

It is the intent of subsection (5) of section 7 [53-2-707] that the Departments require the sponsoring project to complete attendance reports and to provide meaningful job supervision. The Departments should clarify, in the agreement with the sponsoring project, who will be responsible for materials, equipment, and tools necessary to participate in the project."

Departments to Make Recommendations: Section 9, Ch. 390, L. 1981, provided: "The departments shall make recommendations to the 48th legislature as to the feasibility of expanding the program to include recipients of other forms of public assistance. The departments' recommendations may be accompanied by suggested legislation necessary to implement the recommendations made."

53-2-701. Purpose. The purpose of this part is to establish a work experience and training program to be coordinated, whenever fiscally advantageous, with the federal WIN program to provide recipients of AFDC payments an opportunity to contribute their efforts to society, to improve their skills and increase their employment opportunities, to promote their self-sufficiency, and to explore the feasibility of expanding this program to include recipients of other forms of public assistance.

History: En. Sec. 1, Ch. 390, L. 1981.

53-2-702. Definitions. As used in this part, the following definitions apply:

(1) "AFDC" means aid to families with dependent children, as defined in the federal Social Security Act, 42 U.S.C. 601 through 626.

(2) "Board" means the board of social and rehabilitation appeals provided for in 2-15-2203.

(3) "Departments" means the department of social and rehabilitation services provided for in Title 2, chapter 15, part 22, and the department of labor and industry provided for in Title 2, chapter 15, part 17.

(4) "Program" means the work experience and training program established under this part.

(5) "Project" means a place, approved by the departments, at which a recipient of AFDC payments may receive work experience or training.

(6) "WIN" means the federal work incentive program provided for in 42 U.S.C. 630 through 644.

History: En. Sec. 2, Ch. 390, L. 1981.

53-2-703. Departments to establish program. The departments shall work jointly to establish a program in which an employable or potentially employable person may be required to participate as a condition of eligibility for AFDC payments. AFDC payments shall continue to be paid to such a person by the same agencies authorized to make such payments prior to October 1, 1981, pursuant to Title 53, chapter 4, and regulations under WIN. The departments may jointly or individually enter into agreements with governmental units or agencies or nonprofit agencies to establish projects to effectuate this program. The departments shall, to the extent practicable, establish the program on a statewide basis.

History: En. Sec. 3, Ch. 390, L. 1981.

53-2-704. Exemptions. A person is exempt from mandatory participation in the program if he is:

(1) under 16 years of age;

(2) enrolled in and attending school full time when attendance is appropriate and 16 but not yet 21 years of age;

(3) ill or significantly and substantially incapacitated if it has been determined by the department, on the basis of medical evidence or on another sound basis, that the illness or incapacitation is serious enough to temporarily or permanently prevent the person from engaging in a work experience or training project;

(4) the caretaker in the home of a household member who requires the person's presence in the home on a substantially continuous basis as determined by a physician or a licensed or certified psychologist. Only one member of a household may claim this exemption.

(5) the mother, the father, or other caretaker relative of a child under the age of 6. Only one member of a household may claim this exemption.

(6) 65 years of age or older; or

(7) for any other reason exempt from participating in the WIN program pursuant to federal regulations.

History: En. Sec. 4, Ch. 390, L. 1981.

53-2-705. Suitability of project. A project established under this part may not be used to supplant or perform any work ordinarily performed by:

(1) a regular employee, whether paid or voluntary; or

(2) a regular employee whose position is vacant due to a labor strike or a lockout currently in active progress.

History: En. Sec. 5, Ch. 390, L. 1981.

53-2-706. Disqualification from public assistance — right of appeal. (1) If the departments or their authorized designees determine that a person required to participate in the program has failed or refused to do so or has failed to comply with the rules established under 53-2-707, that person, upon written notice by one of the departments or its authorized designee, shall be disqualified from receiving AFDC payments. The termination of AFDC payments for any person may not affect AFDC payments or any other form of public assistance received by other members of the same household.

(2) Upon written notification of disqualification, an affected person may appeal to:

(a) the board for a fair hearing, pursuant to Title 53, chapter 2, part 6; or

(b) the department of labor and industry for redress under the WIN adjudication process, pursuant to [29] CFR part 56 and 45 CFR part 1398.

History: **En. Sec. 6, Ch. 390, L. 1981.**

Compiler's Comments

Commissioner Correction: The context of the cite in subsection (2)(b) to CFR provisions, supported by working papers drafted during the legislative process, indicates reference to volume 29 CFR.

53-2-707. Adoption of rules. The departments jointly shall adopt rules for:

(1) the determination of suitable projects;

(2) the determination of employability;

(3) registration and participation in the program;

(4) the determination of disqualification for AFDC payments and subsequent reeligibility of persons who fail to comply with the provisions of this part and rules adopted under it;

(5) reporting and other responsibilities of the sponsoring project;

(6) hearing procedures required under 53-2-706, and the determination of which appeal process is appropriate for the recipient; and

(7) the administration of the program and the delegation of responsibilities between the departments.

History: **En. Sec. 7, Ch. 390, L. 1981.**

53-2-708. Compliance with federal requirements authorized. The departments are authorized to comply with such federal requirements and to adopt such methods of administration as may be necessary under WIN or similar federal programs to obtain federal funds in the maximum amount and most advantageous proportion possible.

History: **En. Sec. 8, Ch. 390, L. 1981.**

53-2-709. Conflict with federal law. If any portion of the program is found to conflict with federal law or rules, that portion may be suspended.

History: **En. Sec. 10, Ch. 390, L. 1981.**

CHAPTER 3

GENERAL RELIEF

Part 1 — General Provisions

Section

53-3-101. Definitions.
53-3-102. Administration.
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53-3-104. Institutionalization, medical aid, and hospitalization for indigent — county to levy taxes and establish budgets in support of.
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Part 2 — Eligibility and Application for General Relief

53-3-201. Residency requirements.

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53-3-301. Amount of general relief assistance to be determined by county board.
53-3-302. Payment by check or disbursing order.
53-3-303. Recipient to register for suitable employment.
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53-3-305. Effect of refusal to work.
53-3-306. County liability for general relief.
53-3-307. County medical assistance not to be paid from state funds — exception.

Part 1

General Provisions

53-3-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Department" means the department of social and rehabilitation services provided for in Title 2, chapter 15, part 22.

(2) "Interstate transient" is defined as an individual who has signed a declaration that he is unable to pay for his own necessities or transportation to return to his state of residence or origin and is en route to a point outside of this state, being unable, due to unexpected distress, to reach his destination.

(3) "Public assistance" or "assistance" means any type of monetary or other assistance furnished under this title to a person by a state or county agency, regardless of the original source of the assistance.

History: (1), (3)En. 71-201.1 by Sec. 19, Ch. 121, L. 1974; Sec. 71-201.1, R.C.M. 1947; (2)En. 71-302.2 by Sec. 1, Ch. 225, L. 1974; amd. Sec. 25, Ch. 37, L. 1977; Sec. 71-302, R.C.M. 1947; R.C.M. 1947, 71-201.1, 71-302.2(5).

53-3-102. Administration. The department and county departments of public welfare are hereby authorized and charged with the administration and supervision of general relief under the powers, duties, and functions as prescribed in chapter 2 of this title. The department may adopt rules and take other action necessary to carry out its responsibilities under this chapter.

History: En. Sec. 1, Part 2, Ch. 82, L. 1937; R.C.M. 1947, 71-301; amd. Sec. 2, Ch. 199, L. 1979.

Compiler's Comments

Statement of intent. The statement of intent attached to Ch. 199, L. 1979, provided: "A statement of intent is required for this bill in that it delegates authority to adopt rules in sections 1 through 4.

1. Under present law, SRS has express rulemaking authority to carry out most of its duties under Title 53. The Department's present authority includes the power to adopt rules to implement and carry out the following: child welfare services; Aid to Dependent Children programs; subsidized adoption; protective services for adults; Medical Assistance programs; sheltered workshop programs; community based services; community homes and protective services for the developmentally disabled; and vocational rehabilitation programs.

2. While there are duties for which SRS has express rulemaking authority, there also are duties for which the Department's rulemaking authority could only be implied. The Montana Administrative Procedure Act, Section

2-4-102(11)(a), MCA, requires that substantive rules be adopted under express authority in order to be valid. Under an agreement with the Administrative Code Committee, SRS introduced legislation to eliminate this gap in the Department's express authority. This bill gives SRS express rulemaking authority to adopt rules to comply with federal law; to carry out its responsibilities for public welfare; and to administer vocational rehabilitation for the blind.

3. The express authority given to SRS under this bill will allow the Department to adopt rules which cover the following areas: eligibility requirements for various services; scope of services to be offered; specific criteria that providers of services must meet to qualify as providers; how, when, and in what form various types of assistance will be offered; and procedure for applying for and receiving aid. The area of social services is a field which evolves as the needs of the population change. Federal programs and their concomitant regulations are constantly being revised and altered. This legislation allows SRS to adapt the specifics of its social services programs to meet those federal changes but within the confines of state law."

53-3-103. Medical aid and hospitalization for indigent. (1) Except as provided in other parts of this title, medical aid and hospitalization for county residents and nonresidents within the county unable to provide these necessities for themselves are the legal and financial responsibility of the county commissioners and are payable from the county poor fund. The county commissioners shall make provisions for competent and skilled medical or surgical services. "Medical" or "medicine" as used in this section refers to the healing art as practiced by licensed practitioners.

(2) The board, in arranging for medical care for those unable to provide it for themselves, may have the care provided by physicians appointed by the board who shall be known as county physicians or deputy county physicians and may fix a rate of compensation for the furnishing of the medical attendance.

(3) The department may promulgate rules to determine under what circumstances persons in the county are unable to provide medical aid and hospitalization for themselves, including the power to define the term "medically needy". However, the definition may not allow payment by a county for general assistance—medical for persons whose income exceeds 300% of the limitation for obtaining regular county general relief assistance or for persons who are eligible for medicaid in accordance with Title 53, chapter 6, part 1, or for persons who have the right or are entitled to medical aid and hospitalization from the federal government or any agency thereof.

(4) In any case where the county or state pays medical expenses or hospitalization for an individual, the county or state is subrogated to the claims of the physician or hospital to the extent of payment. To the extent necessary for reimbursement of medical benefits paid to or on behalf of an individual, the county or state is subrogated to the rights of the individual to recover from a third party who may be liable to pay the medical expenses. The provisions of 53-2-612 which relate to medical benefits provided under Title XIX or XX of the Social Security Act apply to medical benefits provided for in this section.

History: En. Sec. 6, Part 2, Ch. 82, L. 1937; amd. Sec. 15, Ch. 129, L. 1939; amd. Sec. 5, Ch. 117, L. 1941; amd. Sec. 1, Ch. 155, L. 1947; amd. Sec. 9, Ch. 199, L. 1951; amd. Sec. 1, Ch. 57, L. 1955; amd. Sec. 1, Ch. 86, L. 1957; amd. Sec. 16, Ch. 212, L. 1965; amd. Sec. 29, Ch. 121, L. 1974; amd. Sec. 2, Ch. 225, L. 1974; amd. Sec. 1, Ch. 375, L. 1975; amd. Sec. 30, Ch. 37, L. 1977; amd. Sec. 3, Ch. 379, L. 1977; R.C.M. 1947, 71-308(1), (2), (4), (5); amd. Sec. 4, Ch. 38, L. 1979; amd. Sec. 1, Ch. 707, L. 1979; amd. Sec. 1, Ch. 325, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "as are approved by the department of health and environmental sciences or the state medical association or, in the case of osteopathic practitioners, by the state osteopathic association, or in the case of chiropractors, by the state chiropractic association, or in the case of optometrical services, by the Montana optometric association, or in the case of dental services, by the dental association" after "surgical services" in (1).

Preamble: The preamble to Ch. 325, L. 1981 (SB 411), provided: "WHEREAS, during its sunset review of medical licensing boards the Legislative Audit Committee noted that services for medical aid and hospitalization furnished by a county to indigents must be approved by the Department of Health and Environmental Sciences and private associations; and

WHEREAS, this gives the Department of Health and Environmental Sciences and private associations a veto power over a county's choice of services; and

WHEREAS, the law provides that services for medical aid and hospitalization provided by counties must be furnished by licensed practitioners.

THEREFORE, it is the intent of this act to delete the requirement that services for medical aid and hospitalization furnished indigents by the counties be approved by the Department of Health and Environmental Sciences and private associations."

Effective Date: Sec. 2, Ch. 707, L. 1979, provided: "This act is effective on its passage and approval." Approved May 14, 1979.

53-3-104. Institutionalization, medical aid, and hospitalization for indigent — county to levy taxes and establish budgets in support of. Except as otherwise provided in other parts of this title, it is hereby declared to be the primary legal duty and financial obligation of the board of county commissioners to make such tax levies and to establish such budgets in the county poor fund as provided by law and as are necessary to provide adequate institutional care for all such indigent residents as are in need of institutional care and to make such tax levies and establish such budgets in the county poor fund as are necessary to make provisions for medical aid and services and hospitalization for all indigent county residents. All such public assistance and services shall be charges against and payable from the county poor fund.

History: En. Sec. 7, Part 2, Ch. 82, L. 1937; amd. Sec. 6, Ch. 117, L. 1941; amd. Sec. 10, Ch. 199, L. 1951; amd. Sec. 17, Ch. 212, L. 1965; R.C.M. 1947, 71-309.

53-3-105. Burial of indigent. The board of county commissioners shall make suitable arrangements to provide respectable burial for county residents and nonresidents within the county for whom the expenses are not otherwise available.

History: En. Sec. 6, Part 2, Ch. 82, L. 1937; amd. Sec. 15, Ch. 129, L. 1939; amd. Sec. 5, Ch. 117, L. 1941; amd. Sec. 1, Ch. 155, L. 1947; amd. Sec. 9, Ch. 199, L. 1951; amd. Sec. 1, Ch. 57, L. 1955; amd. Sec. 1, Ch. 86, L. 1957; amd. Sec. 16, Ch. 212, L. 1965; amd. Sec. 29, Ch. 121, L. 1974; amd. Sec. 2, Ch. 225, L. 1974; amd. Sec. 1, Ch. 375, L. 1975; amd. Sec. 30, Ch. 37, L. 1977; amd. Sec. 3, Ch. 379, L. 1977; R.C.M. 1947, 71-308(3).

53-3-106. Right of equal consideration. Persons eligible for and in need of general relief, whether employable or unemployable, shall be given equal consideration for public assistance as those persons eligible for assistance under other parts of this title.

History: En. Sec. 3, Part 2, Ch. 82, L. 1937; amd. Sec. 27, Ch. 37, L. 1977; R.C.M. 1947, 71-305.

53-3-107. Grievances concerning general relief assistance. Individuals or committees with complaints or grievances concerning general relief assistance may present their complaints or grievances to either the county board or the department of social and rehabilitation services, and due consideration shall be given all proven facts presented by the individuals or committees. The county board or the state department shall take action to relieve situations brought to their attention under this section to the extent of funds available.

History: **En. Sec. 4, Part 2, Ch. 82, L. 1937; amd. Sec. 8, Ch. 199, L. 1951; amd. Sec. 27, Ch. 121, L. 1974; amd. Sec. 28, Ch. 37, L. 1977; R.C.M. 1947, 71-306.**

Part 2

Eligibility and Application for General Relief

53-3-201. Residency requirements. (1) Any person otherwise qualified who makes his home in Montana with the intent to become a resident shall be eligible for general relief.

(2) If a person is absent from the state voluntarily, he is ineligible for general relief in Montana.

(3) Aliens found to be illegally within the United States are not eligible for relief from state funds.

(4) Nonresidents or interstate transients may receive temporary relief from county funds in cases of extreme necessity and destitution until they are returned at state expense to their state of residence or origin.

History: **En. 71-302.2 by Sec. 1, Ch. 225, L. 1974; amd. Sec. 25, Ch. 37, L. 1977; R.C.M. 1947, 71-302.2(part).**

53-3-202. Application for general relief to be made to county department. Each applicant for general relief shall make application to the county department of public welfare, and the application shall be made in the manner and on the form prescribed by the department of social and rehabilitation services. No application form shall contain what is commonly known as "the pauper's oath". All persons wishing to apply for general relief shall have the opportunity to do so.

History: **En. Sec. 10, Part 2, Ch. 82, L. 1937; amd. Sec. 12, Ch. 199, L. 1951; R.C.M. 1947, 71-312.**

53-3-203. Investigation of application. Whenever a county public welfare department receives an application for general relief assistance, an investigation shall be promptly made. The investigation of each application for general relief assistance shall be conducted by the county board through a staff worker of the county department. Upon completion of such investigation, the county welfare board shall determine whether the applicant is eligible for and should receive a grant, the amount of the grant, and the date on which assistance shall begin. Aid shall be furnished promptly to all eligible persons. Each applicant shall receive written notice of the decision concerning his application.

History: **En. Sec. 11, Part 2, Ch. 82, L. 1937; amd. Sec. 13, Ch. 199, L. 1951; R.C.M. 1947, 71-313.**

53-3-204. Eligibility for general relief based on investigation of resources. An applicant for general relief assistance, including medical care and hospitalization, shall be eligible to receive assistance only after investigation by the county department reveals that the income and resources are insufficient to provide the necessities of life. Assistance shall be provided to meet a minimum subsistence compatible with decency and health.

History: **En. Subd. (b), Sec. 2, Part 2, Ch. 82, L. 1937; amd. Sec. 12, Ch. 129, L. 1939; amd. Sec. 26, Ch. 37, L. 1977; R.C.M. 1947, 71-303.**

Part 3

Grants of Assistance and Liability Therefor

53-3-301 & 302 amend. spec. sess. SEE: V. 1, MCA Annotations

53-3-301. Amount of general relief assistance to be determined by county board. The amount of general relief assistance granted any person or family shall be determined by the county board of public welfare according to the rules and standards of assistance established by the department.

History: En. Sec. 12, Part 2, Ch. 82, L. 1937; amd. Sec. 1, Ch. 47, L. 1949; amd. Sec. 14, Ch. 199, L. 1951; amd. Sec. 32, Ch. 37, L. 1977; R.C.M. 1947, 71-314.

53-3-302. Payment by check or disbursing order. All general relief disbursements by county departments of public welfare shall be by warrant or check. However, if the county welfare department finds that a recipient is in the habit of dissipating general relief allowances instead of using them for the purposes intended or that for any other reason it is better for the recipient and his family to receive the allowance through disbursing orders, then disbursing orders shall be used instead of cash payments. All such disbursing orders must be written in such form that the goods and merchandise to be provided may be furnished by any regular dealer in such goods and merchandise within the county.

History: En. Sec. 5, Part 2, Ch. 82, L. 1937; amd. Sec. 13, Ch. 129, L. 1939; amd. Sec. 1, Ch. 180, L. 1963; amd. Sec. 28, Ch. 121, L. 1974; amd. Sec. 1, Ch. 208, L. 1974; amd. Sec. 29, Ch. 37, L. 1977; R.C.M. 1947, 71-307(part).

53-3-303. Recipient to register for suitable employment. A recipient of general relief must register for employment with the department of labor and industry and must accept available employment within his or her capability. Refusal to accept such employment will render the recipient ineligible for further general relief assistance.

History: En. Sec. 5, Part 2, Ch. 82, L. 1937; amd. Sec. 13, Ch. 129, L. 1939; amd. Sec. 1, Ch. 180, L. 1963; amd. Sec. 28, Ch. 121, L. 1974; amd. Sec. 1, Ch. 208, L. 1974; amd. Sec. 29, Ch. 37, L. 1977; R.C.M. 1947, 71-307(part); amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of labor and industry" for "state employment service".

Short Form Amendment: The 1981 amendment of this section is a short form amendment. See compiler's comment to Title 2, ch. 15, part 17.

53-3-304. Power of county department to require recipient to perform county work. If the county has work available which a recipient of general relief is capable of performing, then the county department of public welfare may require the recipient to perform the work at the prevailing rate of wages paid by that county for similar work, to be paid from the county poor fund in place of granting him general relief. The county department of public welfare shall provide coverage under the Workers' Compensation Act for those recipients of general relief working under the provisions hereof and may enter into such agreements with the division of workers' compensation of the department of labor and industry as may be necessary to carry out the provisions of this section.

History: En. Sec. 5, Part 2, Ch. 82, L. 1937; amd. Sec. 13, Ch. 129, L. 1939; amd. Sec. 1, Ch. 180, L. 1963; amd. Sec. 28, Ch. 121, L. 1974; amd. Sec. 1, Ch. 208, L. 1974; amd. Sec. 29, Ch. 37, L. 1977; R.C.M. 1947, 71-307(part).

53-3-305. Effect of refusal to work. Any recipient of general relief who is subject to the provisions of 53-3-303 and 53-3-304 and who without cause refuses to perform work assigned to him as therein provided shall lose his eligibility for general relief for 1 week for each refusal.

History: **En. Sec. 5, Part 2, Ch. 82, L. 1937; amd. Sec. 13, Ch. 129, L. 1939; amd. Sec. 1, Ch. 180, L. 1963; amd. Sec. 28, Ch. 121, L. 1974; amd. Sec. 1, Ch. 208, L. 1974; amd. Sec. 29, Ch. 37, L. 1977; R.C.M. 1947, 71-307(3).**

53-3-306. County liability for general relief. (1) General relief assistance shall be paid from the poor fund of the county where the eligible person resides.

(2) A person who leaves Montana with the intent to reside in another state and later returns to reside in Montana is considered a new resident for the purposes of this chapter and 53-2-610(3).

(3) When a person who receives general relief assistance moves to reside in another county, he becomes the financial responsibility of the new county from the date he begins to reside in that new county.

History: **En. 71-302.2 by Sec. 1, Ch. 225, L. 1974; amd. Sec. 25, Ch. 37, L. 1977; R.C.M. 1947, 71-302.2(part); amd. Sec. 2, Ch. 450, L. 1979.**

53-3-307. County medical assistance not to be paid from state funds — exception. (1) County medical assistance under 53-3-103 shall not be entitled to be paid from state funds.

(2) Medical expenses arising from accidental injury to interstate transients shall be paid from county funds and reimbursed by the state upon submission of a proper claim.

History: **En. 71-302.2 by Sec. 1, Ch. 225, L. 1974; amd. Sec. 25, Ch. 37, L. 1977; R.C.M. 1947, 71-302.2(part).**

CHAPTER 4

CHILDREN'S SERVICES

Part 1 — Child Welfare Services

Section

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53-4-516. Repealed. Sec. 1, Ch. 162, L. 1981.

Part 1

Child Welfare Services

53-4-101. Definitions. As used in this part, the following definitions apply:

(1) "Child welfare services" means the establishing, extending, and strengthening of child welfare services (especially in predominantly rural areas) for the protection and care of homeless, dependent, and neglected children and children in danger of becoming delinquent.

(2) "Child welfare worker" means staff personnel who have had education and training in the field of child welfare and who are qualified and accepted as such in conformity with the standards established by the department.

(3) "Department" means the department of social and rehabilitation services provided for in Title 2, chapter 15, part 22.

(4) "Public assistance" or "assistance" means any type of monetary or other assistance furnished under this title to a person by a state or county agency, regardless of the original source of the assistance.

History: (1), (2)En. Sec. 2, Part 6, Ch. 82, L. 1937; amd. Sec. 25, Ch. 264, L. 1955; amd. Sec. 49, Ch. 121, L. 1974; Sec. 71-706, R.C.M. 1947; (3), (4)En. 71-201.1 by Sec. 19, Ch. 121, L. 1974; Sec. 71-201.1, R.C.M. 1947; R.C.M. 1947, 71-201.1, 71-706.

53-4-102. Recognition of parental control of children. Nothing in this title shall be construed as authorizing any state or county official, agent, or representative, in carrying out any of the provisions of this title, to take charge of any child over the objection of either of the parents of such child or the person standing in loco parentis to such child, except pursuant to a proper court order.

History: En. Subd. (k) and (l), Sec. 4, Part 6, Ch. 82, L. 1937; R.C.M. 1947, 71-713(part).

53-4-103 through 53-4-110 reserved.

53-4-111. Administrative duties of department. Subject to the authority and regulations of the department and in cooperation with the federal government, the department shall:

(1) adopt rules necessary to carry out the purposes of this part;

(2) administer or supervise all child welfare activities of the state except the child welfare activities which are administered by the department of health and environmental sciences.

History: En. Subd. (a), (b), (c), (d), Sec. 4, Part 6, Ch. 82, L. 1937; Subd. (a) rep. Sec. 10, Ch. 117, L. 1941; amd. Sec. 31, Ch. 121, L. 1974; R.C.M. 1947, 71-708.

53-4-112. Duty to strengthen child welfare services. The department shall make provision for establishing and strengthening child welfare services, including protective services, and for care of children in licensed family foster homes, child care agencies, group homes, or treatment facilities. Payment provided under this section is made under the provisions of 41-3-104 and 41-5-807.

History: En. Subd. (e), Sec. 4, Part 6, Ch. 82, L. 1937; amd. Sec. 19, Ch. 129, L. 1939; amd. Sec. 32, Ch. 121, L. 1974; R.C.M. 1947, 71-709; amd. Sec. 5, Ch. 297, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "licensed family foster homes, child care agencies, group homes, or treatment facilities" for "family foster homes" in the first sentence; substituted the last sentence for "When funds are available for that purpose, the department may make agreements for the payment of compensation for keeping children in family foster homes."

53-4-113. Child rehabilitation — duties of department. The department shall:

(1) enforce all laws pertaining to children and take the initiative in all matters involving the interest of illegitimate, dependent, neglected, and delinquent children where adequate provision therefor has not been made by law;

(2) use funds available for cases where special medical or material assistance is necessary to rehabilitate subnormal or physically handicapped children and where it is not otherwise provided for by law;

(3) cooperate for the purposes hereof with all reputable child-helping and child-placing agencies; and

(4) inspect, license, and supervise public and private infants' homes and child-caring and child-placing institutions and agencies.

History: En. Subd. (f), (g), (h), Sec. 4, Part 6, Ch. 82, L. 1937; amd. Sec. 9, Ch. 117, L. 1941; amd. Sec. 27, Ch. 264, L. 1955; amd. Sec. 35, Ch. 37, L. 1977; R.C.M. 1947, 71-710.

53-4-114. Department to supervise importation and exportation of children. The department shall supervise the importation and exportation of children.

History: En. Subd. (i), Sec. 4, Part 6, Ch. 82, L. 1937; R.C.M. 1947, 71-711.

53-4-115. Department to accept custody of children committed by courts. The department shall accept the guardianship or custody of children committed by the courts to the department and arrange for their care in family foster homes or otherwise in cooperation with county departments of public welfare.

History: En. Subd. (j), Sec. 4, Part 6, Ch. 82, L. 1937; amd. Sec. 20, Ch. 129, L. 1939; R.C.M. 1947, 71-712.

53-4-116. Department to assist other agencies. The department shall assist other departments, agencies, and public and private institutions of the state and federal government, when so requested, by performing services in conformity with the purposes of this part and particularly such services and duties as may be assigned to it by any state board composed of state officers, provided such services and duties are legally within the duties of such state board.

History: En. Subd. (k) and (l), Sec. 4, Part 6, Ch. 82, L. 1937; R.C.M. 1947, 71-713(part).

53-4-117 through 53-4-120 reserved.

53-4-121. Duties of county board. The county board of public welfare shall supervise the local administration of child welfare services under the powers and duties set forth in chapter 2 of this title and subject to the rules of the department.

History: En. Sec. 5, Part 6, Ch. 82, L. 1937; R.C.M. 1947, 71-714(part).

53-4-122. County department to handle county's child welfare work. Regular staff workers of the county department will handle the work of child welfare services in the county. Where such personnel are not qualified to handle the work of child welfare services, the department of social and rehabilitation services will arrange for the services of such special child welfare workers as are necessary.

History: En. Sec. 5, Part 6, Ch. 82, L. 1937; R.C.M. 1947, 71-714(part).

Part 2

Aid to Dependent Children

Part Compiler's Comments

1981 Appropriations Act — Payment Standard: Section 19, HB 500 (1981), provided in part: "The payment standard for families under the aid to families with dependent children program (AFDC) shall be an equal percentage of the poverty index according to family size. The payment standard for a family of two may not exceed $258 in fiscal 1982 and $280 in fiscal 1983."

53-4-201 amend. Spec. Sess. SEE: v. 1, MCA Ann

53-4-201. Definitions. (1) (a) The term "dependent child", for public assistance purposes, means:

(i) a child under the age of 18; or

(ii) a person under the age of 21 who is a student under the regulations prescribed by the department.

(b) The child ((a)(i) or (a)(ii) above) must be deprived of parental support or care by reason of the death, continued absence from the home, continued unemployment, or physical or mental incapacity of a parent and be living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, nephew, niece, or first cousin in a place of residence maintained by one or more of such relatives as his or their own home.

(2) The term "aid to dependent children" means money payments with respect to or payments made for medical care in behalf of a dependent child or dependent children, including money payments or payments made for medical care for any month to meet the needs of a relative with whom a dependent child is living if money payments have been made with respect to such child for such month. The term shall also include emergency assistance to families with children as provided by the federal Social Security Act.

(3) "Department" means the department of social and rehabilitation services provided for in Title 2, chapter 15, part 22.

(4) "Public assistance" or "assistance" means any type of monetary or other assistance furnished under this title to a person by a state or county agency, regardless of the original source of the assistance.

History: (1)En. Subd. (a), Sec. 1, Part 4, Ch. 82, L. 1937; amd. Sec. 17, Ch. 129, L. 1939; amd. Sec. 7, Ch. 213, L. 1943; amd. Sec. 4, Ch. 71, L. 1957; amd. Sec. 2, Ch. 255, L. 1965; amd. Sec. 1, Ch. 373, L. 1971; amd. Sec. 30, Ch. 121, L. 1974; amd. Sec. 1, Ch. 309, L. 1974; amd. Sec. 33, Ch. 37, L. 1977; Sec. 71-501, R.C.M. 1947; (2)En. Subd. (b), Sec. 1, Part 4, Ch. 82, L. 1937; amd.

Sec. 21, Ch. 199, L. 1951; amd. Sec. 5, Ch. 71, L. 1957; amd. Sec. 1, Ch. 292, L. 1971; Sec. 71-502, R.C.M. 1947; (3), (4)En. 71-201.1 by Sec. 19, Ch. 121, L. 1974; Sec. 71-201.1, R.C.M. 1947; R.C.M. 1947, 71-201.1, 71-501(1), 71-502.

53-4-202. Aid to dependent children to be in effect in all counties. It is hereby mandatory and required that the state plan and operation of aid to dependent children shall be in effect in each and every county of the state, and the administration and supervision of aid to dependent children shall be uniform throughout the several counties of the state.

History: En. Sec. 2, Part 4, Ch. 82, L. 1937; amd. Sec. 1, Ch. 156, L. 1951; amd. Sec. 50, Ch. 121, L. 1974; R.C.M. 1947, 71-503(c).

53-4-203 through 53-4-210 reserved.

53-4-211. Administration of aid to dependent children. The department is hereby authorized and is charged with the general administration and supervision of aid to dependent children under the powers, duties, and functions as prescribed in chapter 2 of this title.

History: En. Sec. 2, Part 4, Ch. 82, L. 1937; amd. Sec. 1, Ch. 156, L. 1951; amd. Sec. 50, Ch. 121, L. 1974; R.C.M. 1947, 71-503(a).

53-4-212. Department to make rules. The department shall make such rules and take such action as may be necessary or desirable for carrying out the provisions of this part.

History: En. Sec. 2, Part 4, Ch. 82, L. 1937; amd. Sec. 1, Ch. 156, L. 1951; amd. Sec. 50, Ch. 121, L. 1974; R.C.M. 1947, 71-503(part (e)).

53-4-213. Department rules binding on county welfare departments. All rules of the department made under this part shall be binding upon the county departments of public welfare.

History: En. Sec. 2, Part 4, Ch. 82, L. 1937; amd. Sec. 1, Ch. 156, L. 1951; amd. Sec. 50, Ch. 121, L. 1974; R.C.M. 1947, 71-503(part (e)); amd. Sec. 5, Ch. 38, L. 1979.

53-4-214. Distribution of copies of law and forms by department. The department shall have printed and distribute copies of this part to all county welfare departments and shall prescribe the form of and print and supply to the county welfare department blanks of applications, reports, and such other forms as may be necessary in relation to aid to dependent children.

History: En. Sec. 2, Part 4, Ch. 82, L. 1937; amd. Sec. 1, Ch. 156, L. 1951; amd. Sec. 50, Ch. 121, L. 1974; R.C.M. 1947, 71-503(d).

53-4-215. Cooperation with federal government. The department shall cooperate with the federal government in matters of mutual concern pertaining to assistance to dependent children, including the adoption of such methods of administration as are found by the federal government to be necessary for the efficient operation of the plan for such assistance.

History: En. Sec. 2, Part 4, Ch. 82, L. 1937; amd. Sec. 1, Ch. 156, L. 1951; amd. Sec. 50, Ch. 121, L. 1974; R.C.M. 1947, 71-503(f).

53-4-216. Reports to federal government. The department shall make such reports in such form and containing such information as the federal government may from time to time require and comply with such provisions as the federal government may from time to time find necessary to assure the correctness and verification of such reports.

History: En. Sec. 2, Part 4, Ch. 82, L. 1937; amd. Sec. 1, Ch. 156, L. 1951; amd. Sec. 50, Ch. 121, L. 1974; R.C.M. 1947, 71-503(g).

53-4-217. Department reports. The department shall publish an annual report and such interim reports as may be necessary or required.

History: En. Sec. 2, Part 4, Ch. 82, L. 1937; amd. Sec. 1, Ch. 156, L. 1951; amd. Sec. 50, Ch. 121, L. 1974; R.C.M. 1947, 71-503(h).

53-4-218 through 53-4-220 reserved.

53-4-221. County department charged with local administration. The county department of public welfare shall be charged with the local administration and supervision of aid to dependent children, subject to the powers, duties, and functions prescribed for the county department in chapter 2 of this title.

History: En. Sec. 2, Part 4, Ch. 82, L. 1937; amd. Sec. 1, Ch. 156, L. 1951; amd. Sec. 50, Ch. 121, L. 1974; R.C.M. 1947, 71-503(b).

53-4-222. County administration subject to rules prescribed by department. The county department of public welfare shall administer the provisions of this part in the respective counties subject to the rules prescribed by the department of social and rehabilitation services pursuant to the provisions of this part.

History: En. Sec. 2, Part 4, Ch. 82, L. 1937; amd. Sec. 1, Ch. 156, L. 1951; amd. Sec. 50, Ch. 121, L. 1974; R.C.M. 1947, 71-503(i).

53-4-223. Notice to law enforcement officials. The county department of public welfare shall give prompt notice to appropriate law enforcement officials of the furnishing of aid to dependent children to a child who has been deserted or abandoned by a parent.

History: En. Sec. 2, Part 4, Ch. 82, L. 1937; amd. Sec. 1, Ch. 156, L. 1951; amd. Sec. 50, Ch. 121, L. 1974; R.C.M. 1947, 71-503(j).

53-4-224 through 53-4-230 reserved.

53-4-231. Eligibility. Assistance shall be granted under this part to any dependent child, as defined in 53-4-201, who is in need of such assistance. 53-4-231 amend. spec. Sess. SEE: V. 1, MCA Ann.

History: En. Sec. 3, Part 4, Ch. 82, L. 1937; Subds. (d) and (e) rep. Sec. 9, Ch. 213, L. 1943; amd. Sec. 1, Ch. 148, L. 1947; amd. Sec. 1, Ch. 50, L. 1949; amd. Sec. 22, Ch. 199, L. 1951; amd. Sec. 1, Ch. 90, L. 1971; R.C.M. 1947, 71-504; amd. Sec. 3, Ch. 450, L. 1979.

53-4-232. Application for assistance. Application for assistance under this part shall be made to the county department of the county in which the dependent child is residing. Such application shall be made by the relative with whom the child is living or will live. One application may be made for several children of the same family if they reside with the same person. All individuals wishing to make application for this assistance shall have the opportunity to do so.

History: En. Sec. 4, Part 4, Ch. 82, L. 1937; amd. Sec. 3, Ch. 213, L. 1943; amd. Sec. 23, Ch. 199, L. 1951; R.C.M. 1947, 71-505.

53-4-233. Investigation of applications. Whenever a county department receives a notification of the dependency of a child or an application for assistance, an investigation shall be promptly made. The investigation of each application for aid to dependent children shall be conducted by the county board through a staff worker of the county department. Each applicant shall be informed of his right to a fair hearing and of the confidential nature of information secured with regard to his circumstances. Upon completion of such investigation, the county welfare board shall determine whether the child is eligible for and should receive a grant, the amount of assistance, and the date on which assistance shall begin. Aid shall be furnished promptly to all eligible persons. Each applicant shall receive written notice of the decision concerning his application.

History: En. Sec. 5, Part 4, Ch. 82, L. 1937; amd. Sec. 24, Ch. 199, L. 1951; R.C.M. 1947, 71-506.

53-4-234. Aid not to be denied because father unemployable or unable to find work. Aid to dependent children may not be denied to or for the care of children who would otherwise be entitled to such aid under the laws of this state by the fact that the child is living in the home of his father who is, in the opinion of the county board of public welfare of the appropriate county, either unemployable or who is honestly and responsibly seeking proper employment and is unable to find such employment or by the fact that the child is living in the home of a head of a household who is at the time receiving job training under the laws of this state, nor may the benefits which would otherwise accrue to the child for aid to dependent children under the laws of the state be reduced by reason of any such cause.

History: En. Subd. (a), Sec. 1, Part 4, Ch. 82, L. 1937; amd. Sec. 17, Ch. 129, L. 1939; amd. Sec. 7, Ch. 213, L. 1943; amd. Sec. 4, Ch. 71, L. 1957; amd. Sec. 2, Ch. 255, L. 1965; amd. Sec. 1, Ch. 373, L. 1971; amd. Sec. 30, Ch. 121, L. 1974; amd. Sec. 33, Ch. 37, L. 1977; R.C.M. 1947, 71-501(2).

MCA Annotations

53-4-235. Primary factors in determining whether father honestly and responsibly seeking work. Primary factors in determining whether a father is honestly and responsibly seeking employment include his willingness to register for employment with the department of labor and industry, if that department has a representative in his county of residence, and his willingness to accept employment in which he is able to engage which will increase his ability to maintain himself and his family.

History: En. Subd. (a), Sec. 1, Part 4, Ch. 82, L. 1937; amd. Sec. 17, Ch. 129, L. 1939; amd. Sec. 7, Ch. 213, L. 1943; amd. Sec. 4, Ch. 71, L. 1957; amd. Sec. 2, Ch. 255, L. 1965; amd. Sec. 1, Ch. 373, L. 1971; amd. Sec. 30, Ch. 121, L. 1974; amd. Sec. 33, Ch. 37, L. 1977; R.C.M. 1947, 71-501(3).

53-4-236. Department criteria for determining whether father honestly and responsibly seeking work. The department may establish additional criteria for determining whether a father is honestly and responsibly seeking employment.

History: En. Subd. (a), Sec. 1, Part 4, Ch. 82, L. 1937; amd. Sec. 17, Ch. 129, L. 1939; amd. Sec. 7, Ch. 213, L. 1943; amd. Sec. 4, Ch. 71, L. 1957; amd. Sec. 2, Ch. 255, L. 1965; amd. Sec. 1, Ch. 373, L. 1971; amd. Sec. 30, Ch. 121, L. 1974; amd. Sec. 33, Ch. 37, L. 1977; R.C.M. 1947, 71-501(4).

53-4-237 through 53-4-240 reserved.

53-4-241. Amount of assistance determined by county board. The amount of aid to dependent children granted in any case shall be determined by the county board of public welfare according to the rules and standards of assistance established by the department, as required by the federal Social Security Act.

History: En. Sec. 6, Part 4, Ch. 82, L. 1937; amd. Sec. 25, Ch. 199, L. 1951; R.C.M. 1947, 71-507.

53-4-242. Periodic reconsideration and changes in amount of assistance. All assistance grants made under this part shall be reconsidered by the county department as frequently as may be required by the rules of the department of social and rehabilitation services. After such further investigation as the county department may consider necessary or the department of social and rehabilitation services may require, the amount of assistance may be changed or assistance may be entirely withdrawn if the state or county department finds that the child's circumstances have altered sufficiently to warrant such action.

History: En. Sec. 8, Part 4, Ch. 82, L. 1937; amd. Sec. 1, Ch. 47, L. 1959; amd. Sec. 1, Ch. 152, L. 1959; amd. Sec. 1, Ch. 351, L. 1969; amd. Sec. 49, Ch. 121, L. 1974; amd. Sec. 34, Ch. 37, L. 1977; R.C.M. 1947, 71-509(part).

53-4-243. Special guardianships. (1) If the county department after investigation finds that any recipient is not utilizing the grant adequately for the needs of the child or children, is dissipating such grant, or refuses or fails to accept employment or training and payments made to him would not be used in the best interests of the child or children, the county department may request the county attorney to file a petition in the district court for the appointment of such recipient as guardian of the assistance grant in behalf of the child or children. Such petition shall set forth the facts warranting such appointment. Notice of the hearing on such petition shall be served upon the recipient and the county department not less than 5 days before the date set for such hearing. Such petition may be filed with the clerk of the district court and all process issued and served without payment of costs. If upon the hearing of such petition the court is satisfied that it is for the best interests of the child or children and all parties concerned that such guardian be appointed, he shall order such appointment and may require such guardian to render to the court a detailed, itemized account of expenditures of such assistance payments at such times as the court considers advisable.

(2) It is the intention of this section that the guardianship herein provided for shall be a special and limited guardianship solely for the purpose of safeguarding the assistance grants made to dependent children. Such guardianship shall terminate upon the termination of such assistance grant or sooner on order of the court upon good cause shown.

History: En. Sec. 8, Part 4, Ch. 82, L. 1937; amd. Sec. 1, Ch. 47, L. 1959; amd. Sec. 1, Ch. 152, L. 1959; amd. Sec. 1, Ch. 351, L. 1969; amd. Sec. 49, Ch. 121, L. 1974; amd. Sec. 34, Ch. 37, L. 1977; R.C.M. 1947, 71-509(part).

53-4-244. Payments to person interested in child's welfare in lieu of special guardianship. In lieu of guardianship proceedings, payments may be made in behalf of the child or children to another person found by the county department to be interested in or concerned with the welfare of such needy child or children in accordance with the rules established by the department of social and rehabilitation services.

History: En. Sec. 8, Part 4, Ch. 82, L. 1937; amd. Sec. 1, Ch. 47, L. 1959; amd. Sec. 1, Ch. 152, L. 1959; amd. Sec. 1, Ch. 351, L. 1969; amd. Sec. 49, Ch. 121, L. 1974; amd. Sec. 34, Ch. 37, L. 1977; R.C.M. 1947, 71-509(part); amd. Sec. 2, Ch. 398, L. 1981.

Compiler's Comments

1981 Amendment: Deleted bond requirement for persons who are protective payees for needy children from the end of the section.

Statement of Intent: The statement of intent attached to HB 80 (Ch. 398, L. 1981) provided: "Although a statement of intent is not specifically needed for this bill, the legislature felt that it was necessary to express its intention regarding the handling of protective payees for those recipients of public assistance who need aid in handling their finances. Because this bill removes the bonding requirement for protective payees, it was felt to be necessary to give some guidance on the handling of protective payees. The attached draft has been approved as a suitable approach to the protective payee situation. It is intended that SRS handle protective payees as described in the attached draft or in a manner substantially similar.

AFDC PROGRAM PROTECTIVE PAYEE

A protective payee program is established to assure that AFDC payments are used in a manner consistent with the purpose of assistance in providing for the best interest of the child/children. Montana SRS would establish the following procedure to administer the protective payee program:

1. Establish Need — When there is documented evidence that a caretaker mismanages funds and that the needs of the child are not consistently met, a protective payee may be established.

2. Selection of Payee — The protective payee must be reliable and capable of managing household funds.

Restrictions — The payee can be a family member, friend or staff member of a community or department agency. Ineligible persons would be ET staff, vendors of goods or services dealing directly with the client and specific restricted personnel of the agency. Those restricted include County Commissioners, executive heads of public welfare departments, special investigative or resource staff, staff handling fiscal processes and landlords.

Selection of Payee — The recipient may participate in the selection of the payee, following the selection criteria.

A contractual agreement shall be entered into between the payee and the county outlining the duties and responsibilities of each.

3. Monitor of Payee — The Department shall establish within reasonable guidelines, the method in which the payee shall carry out his responsibilities. Shelter, food and personal need of payment shall be provided in a manner designed to best meet the needs of the recipient.

A record of payments shall be kept on a regular basis by the payee. This record shall be accessible to the Department for review as frequently as indicated by circumstances, but at least every three months. The review shall specifically address the continuing need for a protective payee, and the way the responsibilities are being carried out.

4. Termination of Protective Payee — Termination shall occur when:

a. The caretaker is determined able to assume management of funds.

b. It appears that the protective payee arrangement likely will continue beyond two years. Judicial appointment of a guardian shall be sought.

5. Fair Hearing — Opportunity for a Fair Hearing shall be given to an individual who requests it as a result of any protective payee procedure.

A contractual agreement between the County Welfare Department and protective payee would be made. That agreement would designate the payee, the recipient, and the responsibilities and duties of both the payee and County Welfare Department. A statement would be included designating the payee's understanding of his personal liability in the event of irresponsible actions taken in the role of the payee.

PROTECTIVE PAYEE AGREEMENT

I, ____________________, hereby agree to accept the responsibilities and duties of Protective Payee for ____________________ until such time as I am relieved of said duties.

By signing this agreement I understand that my duties include providing for the shelter, food, and personal needs of ____________________ by properly disbursing the funds provided by the AFDC payment provided by The Montana State Department of Social and Rehabilitation Services.

I further acknowledge that my responsibilities include maintaining a regular record of receipts and method of disbursement to be available to the (county) Department of Public Welfare for review.

I understand that improperly exercising the responsibilities of Protective Payee shall result in the penalties as included in ____________________ MCA.

(SEAL)

____
Signature

____
Date”

53-4-245. Payments to Indians not to be decreased because of certain sums received by enrolled tribal members. When federal law or regulations require, any amount received by an enrolled member of a recognized Indian tribe as per capita payments or a share in the profits and receipts from tribal lands and interests or tribal enterprises may not be used to decrease the amount of assistance received under this part.

History: En. Sec. 8, Part 4, Ch. 82, L. 1937; amd. Sec. 1, Ch. 47, L. 1959; amd. Sec. 1, Ch. 152, L. 1959; amd. Sec. 1, Ch. 351, L. 1969; amd. Sec. 49, Ch. 121, L. 1974; amd. Sec. 34, Ch. 37, L. 1977; R.C.M. 1947, 71-509(3).

53-4-246. County share of participation. Each county where the recipient of aid to dependent children resides shall reimburse the department of social and rehabilitation services in the amount of 22.5% of the approved aid to dependent children grants, exclusive of the federal share.

History: En. Sec. 7, Part 4, Ch. 82, L. 1937; amd. Sec. 18, Ch. 129, L. 1939; amd. Sec. 1, Ch. 191, L. 1945; amd. Sec. 1, Ch. 71, L. 1947; amd. Sec. 6, Ch. 71, L. 1957; amd. Sec. 1, Ch. 7, L. 1961; amd. Sec. 2, Ch. 292, L. 1971; amd. Sec. 2, Ch. 373, L. 1971; amd. Sec. 2, Ch. 309, L. 1974; R.C.M. 1947, 71-508; amd. Sec. 1, Ch. 413, L. 1979.

53-4-247. County liability when recipient moves to another county. A recipient of aid to dependent children who moves to another county in the state shall continue to receive assistance. The county that the recipient moves to shall be charged by the department for the county share of assistance. The county that a recipient moves from shall notify the county that the recipient moves to.

History: En. Sec. 9, Part 4, Ch. 82, L. 1937; amd. Sec. 26, Ch. 199, L. 1951; R.C.M. 1947, 71-510; amd. Sec. 4, Ch. 450, L. 1979.

53-4-248. Parents liable to department for aid to dependent children payments. (1) A payment of public assistance money made to or for the benefit of a dependent child creates a debt due and owing to the department by the natural or adoptive parents who are legally responsible for the support of the child by statute or court decree in an amount equal to the amount of public assistance paid. However, where the support obligation is based upon a court decree, the debt is limited to the amount of the court decree.

(2) The department is subrogated to the right of the child or person having the care, custody, and control of the child to prosecute any support action or execute any administrative remedy existing under the laws of the state to obtain reimbursement of money thus expended. If a court decree enters judgment for an amount of support to be paid by an obligor parent, the department is subrogated to the debt created by the order and the money judgment is in favor of the department. No obligee may commence an action to recover support due and owing to him without first filing an affidavit with the court stating whether he has received public assistance from any source and, if he has received public assistance, that he has notified the department in writing of the pending action.

(3) In no case may a debt arising under this section be incurred by or collected from a parent or other person while he is the recipient of public assistance money for the benefit of minor dependent children.

(4) The remedies herein provided are in addition to and not in lieu of existing common law and statutory law.

(5) The department or its legal representatives may, at any time consistent with the income, earning capacity, and resources of the debtor, petition the court having jurisdiction over the particular case to set or reset a level and schedule of payments to be paid upon the debt.

History: En. 71-511 by Sec. 1, Ch. 368, L. 1974; amd. Sec. 4, Ch. 379, L. 1977; R.C.M. 1947, 71-511.

Part 3

Subsidized Adoption

53-4-301. Short title. This part may be cited as "The Subsidized Adoption Act of 1977".

History: En. 71-1806 by Sec. 1, Ch. 434, L. 1977; R.C.M. 1947, 71-1806.

53-4-302. Purpose. The purpose of this part is to encourage and promote the adoption of children who are hard to place by providing information and assistance in completing the adoption process and financial assistance when necessary to ensure the health and welfare of the hard-to-place child.

History: En. 71-1807 by Sec. 2, Ch. 434, L. 1977; R.C.M. 1947, 71-1807.

53-4-303. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of social and rehabilitation services.

(2) "Hard-to-place child" means a minor, as defined by 41-1-101, who is a dependent of a public or voluntary licensed child-placing agency, legally free for adoption, and is not likely to be adopted because of:

(a) physical or mental disease or disability;

(b) recognized high risk of physical or mental disease or disability; or

(c) sibling relationship to another child who is eligible for adoption.

History: En. 71-1808 by Sec. 3, Ch. 434, L. 1977; R.C.M. 1947, 71-1808.

53-4-304. Power and duties of department. (1) The department shall establish, administer, and regulate a continuing program of subsidized adoption.

(2) The department shall keep such records as are necessary to evaluate the program in terms of the number of children adopted under the program, the cost of the program, and any other pertinent information.

(3) The department may adopt rules necessary for the proper administration of this part.

History: En. 71-1809 by Sec. 4, Ch. 434, L. 1977; R.C.M. 1947, 71-1809.

53-4-305. Subsidized adoption program limited. In providing for the subsidization of adoption as provided for in this part, the department may not expend or otherwise obligate funds in excess of those specifically appropriated for that purpose.

History: En. 71-1812 by Sec. 7, Ch. 434, L. 1977; R.C.M. 1947, 71-1812.

53-4-306. Records to be confidential. All records regarding subsidized adoption shall be confidential and may be disclosed only in accordance with the provisions of 40-8-122.

History: En. 71-1811 by Sec. 6, Ch. 434, L. 1977; R.C.M. 1947, 71-1811(5).

53-4-307. Certification as hard to place. (1) Whenever the conditions of 53-4-303 are found to exist and the foster parents seek to adopt the child, the child shall be certified as hard to place.

(2) In all other cases in which the conditions of 53-4-303 are found to exist and after reasonable efforts have been made and without the use of subsidy no appropriate adoptive family has been found for a child, the department shall certify the child as hard to place.

(3) If the child is the dependent of a voluntary licensed child-placing agency, that agency shall present to the department evidence of inability to place the child for adoption due to any of the conditions specified in 53-4-303. The agency shall present evidence that reasonable efforts have been

made to place the child without subsidy, such as recruitment of potential parents, use of adoption resource exchanges, and referral to appropriate specialized adoption agencies. Upon such a showing, the department shall certify the child as hard to place.

History: **En. 71-1810 by Sec. 5, Ch. 434, L. 1977; R.C.M. 1947, 71-1810(1) thru (3).**

53-4-308. Eligibility for subsidy. Any family which applies for an adoption subsidy, is approved by the department as a suitable adoptive family, is or may be financially unable to meet the special needs of a hard-to-place child as determined by the department, and adopts a hard-to-place child is eligible for subsidy regardless of the domicile or residence of the family at the time of application for adoption, placement, legal decree of adoption, or thereafter.

History: **En. 71-1810 by Sec. 5, Ch. 434, L. 1977; R.C.M. 1947, 71-1810(4).**

53-4-309. Subsidy agreement. (1) When parents are approved for adoption of a child certified as hard to place and before the final decree of adoption is issued, there shall be a written agreement between the family entering into the subsidized adoption and the department. The terms of the adoption subsidy agreement may commence with the adoption placement or at an appropriate time after the adoption decree.

(2) The subsidy agreement shall continue in accordance with its terms until the child reaches majority or for as long as the adopted child is the legal dependent of the adoptive parents and the child's condition continues. Termination or modification of the subsidy agreement may be requested by the adoptive parents or the department at any time.

History: **En. 71-1811 by Sec. 6, Ch. 434, L. 1977; R.C.M. 1947, 71-1811(1), (3).**

53-4-310. Amount, duration, and scope of subsidy. The amount, duration, and scope of the subsidy may vary with the special needs of the child as well as the availability of other resources, including those of the adoptive parents, to meet these needs. The subsidy may be for services only or for the money payments, but in no case may the amount of the subsidy exceed:

(1) in the case of a sibling relationship, that which would be allowable for such child under foster family care; or

(2) in the case of a medical subsidy, the reasonable fee for the services rendered, not to exceed the amount of $2,600 annually.

History: **En. 71-1811 by Sec. 6, Ch. 434, L. 1977; R.C.M. 1947, 71-1811(2).**

53-4-311. Annual sworn certificate from adoptive parents receiving subsidy. When subsidies are for more than 1 year, the adoptive parents shall present an annual sworn certificate that the adopted child remains under their care and the condition that caused the child to be certified continues to exist.

History: **En. 71-1811 by Sec. 6, Ch. 434, L. 1977; R.C.M. 1947, 71-1811(4).**

Part 4

Child Adoption Agencies

53-4-401. Definitions. As used in this part, the following definitions apply:

(1) "Person" includes any individual, partnership, voluntary association, or corporation.

(2) "Agency" includes a person not related by blood or marriage to a minor child to be adopted.

(3) "Department" means the department of social and rehabilitation services provided for in Title 2, chapter 15, part 22.

History: En. Sec. 1, Ch. 179, L. 1949; amd. Sec. 1, Ch. 121, L. 1974; R.C.M. 1947, 10-701; amd. Sec. 175, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "This part does not apply to the Montana children's center" at the end of (2).

53-4-402. License required — term of license — no fee charged. No person shall act as an agency for procuring or selecting proposed adoptive homes or placing minor children in proposed adoptive homes or soliciting persons to adopt minor children or arranging for persons to adopt minor children who is not the holder of a license secured under the provisions of this part. Licenses shall be valid for the balance of the calendar year in which issued. No fee shall be charged for such license.

History: En. Sec. 2, Ch. 179, L. 1949; R.C.M. 1947, 10-702.

53-4-403. General duties of the department. The department is hereby authorized and directed to:

(1) issue licenses to persons now acting as agencies for procuring the adoption of minor children or who may desire to operate as such agency in the future;

(2) prescribe the conditions upon which such licenses shall be issued; and

(3) make such rules for the conduct of the affairs of such agencies as are consistent with the welfare of such minor children.

History: En. Sec. 3, Ch. 179, L. 1949; amd. Sec. 1, Ch. 156, L. 1957; amd. Sec. 49, Ch. 121, L. 1974; R.C.M. 1947, 10-703(part).

53-4-404. Requirements for licensure. The department must issue licenses to agencies meeting the following minimum requirements:

(1) The chief function of the agency must be the care and placement of minor children.

(2) The agency must operate on a nonprofit basis and be financially responsible in and for its operation.

(3) The directing or managing personnel of the agency must be qualified both on the basis of professional education and personality.

(4) Complete records must be kept of both the minor children and adopting parents with which the agency deals, and such records must be confidential.

(5) The agency must follow the practice of verifying that the child is legally available for adoption and of not completing the adoption until the child has been in the proposed adoptive home for a trial period.

(6) The agency must have and use facilities for making a social study of the child and proposed adoptive parents before placement of the child, particularly with regard to:

(a) the physical and mental health, emotional stability, and personal integrity of the adopting parents and their ability to promote the child's welfare; and

(b) the physical and mental condition of the child and its family background.

(7) The agency must agree to cooperate with courts having jurisdiction in adoptive matters and with other public agencies having to deal with the welfare of minor children.

(8) Any such agency must annually submit a full, complete, and true financial statement to the department, and such statement shall contain a full accounting of the operations of such agency during the preceding year.

History: **En. Sec. 3, Ch. 179, L. 1949; amd. Sec. 1, Ch. 156, L. 1957; amd. Sec. 49, Ch. 121, L. 1974; R.C.M. 1947, 10-703(part).**

53-4-405. Investigation of agencies — cancellation of licenses. (1) The department shall have the power and authority through its duly authorized representative to investigate the operations of any such licensed agencies and to cancel licenses theretofore issued for failure to observe prescribed rules or to maintain minimum requirements as set out in the preceding section of this part. Such agencies shall give to such representatives all information requested and afford them every reasonable facility for observing the operation of such agencies.

(2) When the department finds, upon the basis of the report required by 53-4-404(8) or upon its own investigation, that any such agency has not conducted or is financially incapable of conducting its operations according to the standards established pursuant to this part, then the department is precluded from the issuance of or continuance in effect of any such license for said agency for the subsequent year.

History: **(1)En. Sec. 4, Ch. 179, L. 1949; amd. Sec. 49, Ch. 121, L. 1974; Sec. 10-704, R.C.M. 1947; (2)En. Sec. 3, Ch. 179, L. 1949; amd. Sec. 1, Ch. 156, L. 1957; amd. Sec. 49, Ch. 121, L. 1974; Sec. 10-703, R.C.M. 1947; R.C.M. 1947, 10-703(part), 10-704.**

53-4-406. Certified copy of license furnished for adoption proceedings. Upon the request of any district court, proposed adoptive parent, or agency, a certified copy of any license issued and in good standing shall be furnished by the department for use in any adoption proceeding with which any licensed agency is concerned.

History: **En. Sec. 5, Ch. 179, L. 1949; amd. Sec. 49, Ch. 121, L. 1974; R.C.M. 1947, 10-705; amd. Sec. 6, Ch. 38, L. 1979.**

53-4-407. Violation of part a misdemeanor — penalty. (1) Any person who maintains or conducts an agency for procuring the adoption of minor children or assists in the maintaining or conducting of such agency without first obtaining a license is guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding $1,000.

(2) Upon the first conviction of a person for violation of this section, the court, instead of imposing the prescribed sentence, may enjoin the offender from any further action in violation of this section.

History: **En. Sec. 6, Ch. 179, L. 1949; amd. Sec. 1, Ch. 495, L. 1975; R.C.M. 1947, 10-706.**

Part 5

Child Day-Care Centers

Part Compiler's Comments

1981 Appropriations Act — Day-Care Rate: Section 19, HB 500 (1981), provided in part: "The day-care rate per day for homes is not to exceed $6.00 in fiscal 1982 and $6.50 in fiscal 1983. The rate per day is not to exceed $7.00 in fiscal 1982 and $7.50 in fiscal 1983 for day-care centers."

Statement of Intent: The statement of intent attached to HB 646 (Ch. 606, L. 1981) provided: "House Bill 646 generally clarifies the state laws relating to child day-care facilities. (Title 53, chapter 4, part 5)

Levels of care are specifically defined:

(1) Day-care center provides care for 13 or more children. (53-4-501, MCA)

(2) Group day-care home provides care for 7 to 12 children. (53-4-501, MCA)

(3) Family day-care home provides care for three to six children from separate families. (53-4-501, MCA)

The term "day-care facility" has been expanded to include all levels of care. (53-4-501, MCA)

House Bill 646 in sections 53-4-501 and 53-4-502, MCA, eliminates the requirement for family day-care homes and group day-care homes to be licensed, and requires a provider to simply register with the Department of Social and Rehabilitation Services [and certify] that they comply with minimal state regulations for quality care.

Rulemaking authority. Although House Bill 646 amends 53-4-501 through 53-4-516, MCA, the present law does give the Department of Social and Rehabilitation Services the authority for the purposes of Title 53, chapter 4, part 5, to license child day-care facilities and for rulemaking authority in relation to licensing. However, because of the new provisions in this act and the fact rules have not been revised since 1965, it is anticipated new rules will be promulgated.

Rules relating to licensing or registration will address the following areas:

(1) Family day-care homes and group day-care homes — character, suitability, qualifications of applicants to care for children; programs and practices for health, safety, transportation, development; ages and numbers of children that may be cared for in a day-care facility.

(2) Day-care centers — including the above — numbers of staff required for adequate supervision; physical facilities and equipment; admission procedures; health supervision of staff, essential records, general financial ability and competence of an applicant to provide necessary care and maintain prescribed standards. Availability of public liability insurance and fire insurance is applicable to all levels of care. (53-4-508, MCA)

(3) Rules dealing with health and safety will be developed with the assistance of the Department of Health and Environmental Sciences. (53-4-506, MCA)

(4) Physical well-being and safety of the children in day-care facilities is provided by the state Fire Marshal who shall adopt standards for fire and life safety. (53-4-505, MCA)

It is the intention of the Legislature that the rates payable to a day-care facility under section 15 [see 53-4-514] be set after the appropriation level has been determined by the Legislature."

53-4-501. Purpose — definitions. (1) The purpose of this part is to assure that children requiring supplemental parental care be provided such food, shelter, security and safety, guidance and direction, nurture and comfort, and learning experiences commensurate to their ages and capabilities so as to safeguard the growth and development of such children, thereby facilitating their proper physical and emotional maturation.

(2) In this part, the following definitions apply:

(a) "Child" means a person under 12 years of age.

(b) "Day-care facility" means a person, association, or place, incorporated or unincorporated, that provides supplemental parental care on a regular basis. It includes a family day-care home, a day-care center, or a group day-care home. It does not include a person who limits care to children who are related to him by blood or marriage or under his legal guardianship or any group facility established chiefly for educational purposes.

(c) "Day-care center" means a place in which supplemental parental care is provided to 13 or more children on a regular basis.

(d) "Department" means the department of social and rehabilitation services provided for in Title 2, chapter 15, part 22.

(e) "Day care" means supplemental parental child care.

(f) "Supplemental parental child care" means the provision of food, shelter, and learning experiences commensurate with a child's age and capabilities so as to safeguard the child's growth and development on a supplemental basis outside of the child's home by an adult other than a parent, guardian, person in loco parentis, or relative on a regular basis for daily periods of less than 24 hours.

(g) "Regular basis" means providing supplemental parental care to children of separate families for any daily periods of less than 24 hours and within 3 or more consecutive weeks.

(h) "Family day-care home" means a private residence in which supplemental parental care is provided to three to six children from separate families on a regular basis.

(i) "Group day-care home" means a private residence in which supplemental parental care is provided to 7 to 12 children on a regular basis.

(j) "Registration" means the process whereby the department maintains a record of all family day-care homes and group day-care homes, prescribes standards, promulgates rules, and requires the operator of a family day-care home or a group day-care home to certify that he has complied with the prescribed standards and promulgated rules.

(k) "Registrant" means the holder of a registration certificate issued by the department in accordance with the provisions of this part.

(l) "Registration certificate" means a written instrument issued by the department to publicly document that the certificate holder has, in writing, certified to the department his compliance with this part and the applicable standards for family day-care homes and group day-care homes.

(m) "License" means a written document issued by the department that the license holder has complied with this part and the applicable standards and rules for day-care centers.

(n) "Licensee" means the holder of a license issued by the department in accordance with the provisions of this part.

History: (1)En. Sec. 1, Ch. 606, L. 1981; (2)En. Sec. 1, Ch. 247, L. 1965; amd. Sec. 2, Ch. 121, L. 1974; R.C.M. 1947, 10-801; amd. Sec. 7, Ch. 38, L. 1979; amd. Sec. 2, Ch. 606, L. 1981.

Compiler's Comments

1981 Amendment: Added subsection (1); in (2)(b), substituted "provides supplemental . . . group day-care home" for "receives for care during the day or part of the day three or more children of separate families and continues this type of care for 5 or more consecutive weeks"; substituted subsection (2)(c) for ""Day-care center" means a day-care facility that receives seven or more children for care for 5 or more hours of the day for 5 or more consecutive weeks. It may include facilites known as child-care centers, nursery schools, day nurseries, and centers for the mentally retarded"; and added subsections (2)(e) through (2)(n).

Codification Instruction: Section 19, Ch. 606, L. 1981, provided: "Sections 1 [53-4-501(1)] and 18 [53-4-515(1)] are intended to be codified as an integral part of Title 53, chapter 4, part 5, and the provisions of Title 53, chapter 4, part 5, apply to sections 1 and 18."

53-4-502. License required — registration required — term of license or registration certificate — no fee charged. (1) No person, group of persons, or corporation shall:

(a) establish or maintain a day-care center for children unless licensed to do so by the department;

(b) operate a family day-care home or group day-care home without first procuring a family day-care or group day-care registration certificate from the department.

(2) The license and registration certificate shall set forth the ages and numbers of children for whom supplemental parental care may be provided.

(3) The applicant's own children must be included in the manner provided for in department regulations in the total number of children to be cared for under the license or registration certificate.

(4) Licenses or registration certificates shall be issued for periods not to exceed 1 year. The department shall charge no fee to issue a license or registration certificate.

History: En. Sec. 2, Ch. 247, L. 1965; amd. Sec. 49, Ch. 121, L. 1974; R.C.M. 1947, 10-802; amd. Sec. 3, Ch. 606, L. 1981.

Compiler's Comments

1981 Amendment: Substituted the present language of the section for "No person, group of persons, or corporation shall establish and maintain a day-care facility for children unless licensed to do so by the department. The license shall be valid for 1 year. There shall be no fee for the license."

53-4-503. Powers and duties of the department. The department shall:

(1) issue licenses to persons to receive children into a day-care center on a regular basis;

(2) prescribe the conditions and publish minimum standards upon which licenses and registration certificates are issued;

(3) adopt rules for day-care facilities consistent with the purposes of this part; and

(4) issue registration certificates to a person or persons to receive children into a family day-care home or group day-care home on a regular basis.

History: En. Sec. 6, Ch. 247, L. 1965; amd. Sec. 6, Ch. 121, L. 1974; amd. Sec. 1, Ch. 293, L. 1977; R.C.M. 1947, 10-806(part); amd. Sec. 4, Ch. 606, L. 1981.

Compiler's Comments

1981 Amendment: Substituted present (1) for "issue licenses to persons to receive into a day-care facility children for care during the day or part of a day"; in (2), inserted "and publish minimum standards" and "and registration certificates"; substituted present (3) for "adopt rules for the conduct of the facilities which are consistent with the welfare of the children received"; inserted (4); and made a minor change in phraseology.

Statement of Intent: The statement of intent attached to HB 646 (Ch. 606, L. 1981) provided: "House Bill 646 generally clarifies the state laws relating to child day-care facilities. (Title 53, chapter 4, part 5)

Levels of care are specifically defined:

(1) Day-care center provides care for 13 or more children. (53-4-501, MCA)

(2) Group day-care home provides care for 7 to 12 children. (53-4-501, MCA)

(3) Family day-care home provides care for three to six children from separate families. (53-4-501, MCA)

The term "day-care facility" has been expanded to include all levels of care. (53-4-501, MCA)

House Bill 646 in sections 53-4-501 and 53-4-502, MCA, eliminates the requirement for family day-care homes and group day-care homes to be licensed, and requires a provider to simply register with the Department of Social and Rehabilitation Services [and certify] that they comply with minimal state regulations for quality care.

Rulemaking authority. Although House Bill 646 amends 53-4-501 through 53-4-516, MCA, the present law does give the Department of Social and Rehabilitation Services the authority for the purposes of Title 53, chapter 4, part 5, to license child day-care facilities and for rulemaking authority in relation to licensing. However, because of the new provisions in this act and the fact rules have not been revised since 1965, it is anticipated new rules will be promulgated.

Rules relating to licensing or registration will address the following areas:

(1) Family day-care homes and group day-care homes — character, suitability, qualifica-

tions of applicants to care for children; programs and practices for health, safety, transportation, development; ages and numbers of children that may be cared for in a day-care facility.

(2) Day-care centers — including the above — numbers of staff required for adequate supervision; physical facilities and equipment; admission procedures; health supervision of staff, essential records, general financial ability and competence of an applicant to provide necessary care and maintain prescribed standards. Availability of public liability insurance and fire insurance is applicable to all levels of care. (53-4-508, MCA)

(3) Rules dealing with health and safety will be developed with the assistance of the Department of Health and Environmental Sciences. (53-4-506, MCA)

(4) Physical well-being and safety of the children in day-care facilities is provided by the state Fire Marshal who shall adopt standards for fire and life safety. (53-4-505, MCA)

It is the intention of the Legislature that the rates payable to a day-care facility under section 15 [see 53-4-514] be set after the appropriation level has been determined by the Legislature."

53-4-504. Standards for day care. In developing standards, the department shall seek the advice and assistance of the department of health and environmental sciences and superintendent of public instruction, representatives of day-care facilities, specialists in child care, and representatives of parent groups who use the services of day-care facilities. The standards may pertain to:

(1) character, suitability, and qualifications of an applicant and other persons directly responsible for the care of children;

(2) the number of individuals or staff required for adequate supervision and care of children in day-care facilities;

(3) child-care programs and practices necessary to ensure the health, safety, safety in transportation, development, and well-being of children;

(4) adequate and appropriate admission policies;

(5) adequacy of physical facilities and equipment;

(6) general financial ability and competence of an applicant to provide necessary care for children and maintain prescribed standards;

(7) the ages and numbers of children that may be cared for in a day-care facility.

History: En. Sec. 3, Ch. 247, L. 1965; amd. Sec. 3, Ch. 121, L. 1974; R.C.M. 1947, 10-803; amd. Sec. 5, Ch. 606, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "The department of social and rehabilitation services shall prescribe and publish minimum standards for a license" as the first sentence; in (2), substituted "facilities" for "centers"; in (3), substituted "necessary to ensure the health, safety, safety in transportation" for "essential to the protection of health, safety"; and added subsection (7).

53-4-505. Fire safety — certification required. (1) The state fire marshal of the department of justice shall adopt and enforce rules for the protection of children in day-care centers from fire hazards and arrange for such inspections and investigations as it considers necessary.

(2) Before a license can be issued to operate a day-care center, each applicant shall submit to the department a certificate of approval from the fire marshal bureau of the department of justice or its designee, indicating that fire safety rules have been met.

History: En. Sec. 4, Ch. 247, L. 1965; amd. Sec. 4, Ch. 121, L. 1974; R.C.M. 1947, 10-804; amd. Sec. 8, Ch. 38, L. 1979; amd. Sec. 6, Ch. 606, L. 1981.

Compiler's Comments

1981 Amendment: In (1), substituted "day-care centers" for "care facilities"; in (2), substituted "Before a license can be issued" for "Each applicant for a license", inserted "each applicant" before "shall submit", deleted "of social and rehabilitation services" after "department", inserted "from the fire marshal bureau of the department of justice or its designee", and deleted "before a license can be issued" at the end; and deleted subsection (3) relating to automatic sprinkler systems required in certain homes.

53-4-506. Health protection — certification required. (1) The department of health and environmental sciences shall adopt rules for the protection of children in day-care centers from the health hazards of inadequate food preparation, poor nutrition, and communicable diseases.

(2) Local public health authorities shall arrange to provide training to day-care center providers and employees regarding health hazards. Upon successful completion of the training the local public health authorities shall issue certificates to the providers and employees.

(3) In lieu of training, local public health authorities may elect to inspect facilities and issue certificates of approval to child-care center providers.

(4) Each applicant for a license to operate a day-care center shall submit to the department a certificate issued pursuant to subsection (2) or (3) before the department will issue a license.

(5) The local public health authority may charge the applicant a reasonable fee, not to exceed $25, for any inspection necessary to issue a certificate of approval, or a fee not to exceed the documented cost for training it provides under this section.

History: En. Sec. 5, Ch. 247, L. 1965; amd. Sec. 5, Ch. 121, L. 1974; R.C.M. 1947, 10-805; amd. Sec. 7, Ch. 606, L. 1981.

Compiler's Comments

1981 Amendment: In (1), deleted "overcrowding" after "hazards of", inserted "inadequate" before "food preparation", inserted "poor nutrition", and deleted "and arrange for any inspections and investigations it considers necessary" at the end; inserted subsections (2), (3), and (5); and in (4), deleted "of social and rehabilitation services" after "department" and substituted "issued pursuant to subsections (2) and (3) before the department will issue a license" for "of approval that the department of health and environmental sciences rules have been met before a license can be issued".

53-4-507. Application for a license or registration certificate. (1) Application for a license or registration certificate shall be made to the department in the county in which the applicant lives on forms prescribed by the department.

(2) Applications for a license or registration certificate by Indians residing on Indian reservations shall be made through the tribal governing body on forms prescribed by the department. Applications made through a tribal governing body shall be accompanied by a request by the tribal governing body that the department investigate to determine whether a license or registration certificate should be granted.

(3) Within 30 days of receipt of the application, the department shall investigate to determine whether a license or registration certificate should be issued.

History: En. Sec. 6, Ch. 247, L. 1965; amd. Sec. 6, Ch. 121, L. 1974; amd. Sec. 1, Ch. 293, L. 1977; R.C.M. 1947, 10-806(part); amd. Sec. 8, Ch. 606, L. 1981.

Compiler's Comments

1981 Amendment: In (1), inserted "or registration certificate" after "license", deleted "of social and rehabilitation services through the county department of public welfare" before "in the county", and deleted "of social and rehabilitation services. Upon receipt of the application, the county welfare department shall within a reasonable time investigate to determine whether a license should be granted" at the end; in (2), inserted "for a license or registration certificate" after "Applications", deleted "of social and rehabilition services" after "department" in the first sentence, deleted "county welfare" before "department" and "in the county in which the applicant resides" after "department" in the second sentence, inserted "or registration certificate" after "license", and deleted "This investigation shall be made within a reasonable time" as the last sentence; and added subsection (3).

53-4-508. Requirements for licensure. (1) The department shall include in the minimum standards for day-care centers the following requirements:

(a) The applicant, his employees, and all those persons who will come in direct contact with the children are of good character.

(b) The staff of the day-care facility is sufficient in number as provided by rule to provide adequate supervision and care of the children in the facility.

(c) Essential programs and practices carried on by the facility staff are developed and carried out with due regard for the protection of the health, safety, development, and well-being of the children.

(d) Applicant and staff are qualified by practical experience or education or training to give good care and treatment to the children.

(e) Intake records are kept on each child admitted for care.

(f) The applicant and staff limit admissions to the maximum number indicated on the current license.

(g) The applicant will arrange for the necessary precautions to guard against communicable diseases.

(h) Public liability insurance and fire insurance are currently in force for the protection of the operator, his staff, and the facility.

(i) Specify the ages and numbers of children that may be cared for in a day care facility.

(2) It is the duty of the department or its authorized representative to assist applicants in meeting the minimum requirements.

History: (1)En. Sec. 6, Ch. 247, L. 1965; amd. Sec. 6, Ch. 121, L. 1974; amd. Sec. 1, Ch. 293, L. 1977; Sec. 10-806, R.C.M. 1947; (2)En. Sec. 9, Ch. 247, L. 1965; amd. Sec. 49, Ch. 121, L. 1974; Sec. 10-809, R.C.M. 1947; R.C.M. 1947, 10-806(part), 10-809(part); amd. Sec. 9, Ch. 606, L. 1981.

Compiler's Comments

1981 Amendment: In (1), substituted "shall include in the minimum standards for day-care centers the following" for "must issue licenses to agencies meeting the following minimum"; in (1)(a), deleted "moral" before "character"; in (1)(b), inserted "day-care" before "facility", inserted "as provided by rule" after "number", and substituted "in the facility" for "admitted"; deleted former subsection (1)(e): "Physical facilities are of a kind that can meet the minimum state standards to provide for the protection of the children from fire and health hazards"; added subsection (1)(i); and in (2), substituted "is" for "shall be".

53-4-509. Provisional license — provisional registration certificate. (1) The department may issue a provisional license or provisional registration certificate for a period which may not exceed 6 months if it finds that a day-care facility or applicant does not meet all standards established by the department, as long as the facility or applicant is attempting to meet the minimum standards.

(2) The department may not waive the requirement that a day-care center be certified under the provisions of 53-4-505 and 53-4-506.

(3) The department may not waive the requirement that a day-care facility have current and adequate public liability insurance and fire insurance.

History: En. Sec. 7, Ch. 247, L. 1965; amd. Sec. 7, Ch. 121, L. 1974; R.C.M. 1947, 10-807; amd. Sec. 9, Ch. 38, L. 1979; amd. Sec. 10, Ch. 606, L. 1981.

Compiler's Comments

1981 Amendment: In (1), deleted "of social and rehabilitation services" after "department", deleted "in its discretion" before "issue", inserted "or provisional registration certificate", substituted "which may not exceed" for "of not more than", deleted "substandard" before "day-care facility", and inserted "or applicant does not meet all standards established by the department, as long as the facility or applicant"; substituted present (2) for "The requirement that a day-care center shall be certified by the state fire marshal of the department of justice and the department of health and environmental sciences may not be waived"; and added subsection (3).

53-4-510. Renewal license — registration certificate. If a licensed or registered day-care facility desires to renew a license or registration certificate, the request for renewal shall be made in writing, on forms prescribed by the department, in the county in which the applicant lives, 30 days prior to the expiration of its license or registration certificate.

History: En. Sec. 8, Ch. 247, L. 1965; amd. Sec. 49, Ch. 121, L. 1974; R.C.M. 1947, 10-808; amd. Sec. 11, Ch. 606, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "or registered" after "licensed"; substituted "renew a license or registration certificate, the" for "apply for a renewal of its license, a"; substituted "on forms prescribed by the department, in the county in which the applicant lives, 30 days" for "to the department 10 days"; and inserted "or registration certificate" at the end.

53-4-511. Periodic visits to facilities by department — investigations — consultation with licensees and registrants. (1) The department or its authorized representative shall make periodic visits to all licensed day-care centers to ensure that minimum standards are maintained.

(2) The department may investigate and inspect the conditions and qualifications of any day-care center, group day-care home, or family day-care home seeking or holding a license or registration certificate under the provisions of this part.

(3) The department must visit and inspect at least 15% of all registered family day-care homes and group day-care homes in each of the governor's planning regions annually.

(4) Upon request of the department, the state department of health or the state fire marshal or his designee shall inspect any day care facility for which a license or registration certificate is applied for or issued and shall report its findings to the department.

(5) Upon request, the department shall give consultation to every licensee and registrant who desires to upgrade the services of his program.

History: En. Sec. 9, Ch. 247, L. 1965; amd. Sec. 49, Ch. 121, L. 1974; R.C.M. 1947, 10-809(part); amd. Sec. 12, Ch. 606, L. 1981.

Compiler's Comments

1981 Amendment: In (1), deleted "It shall be the duty of" at the beginning, substituted "shall" for "to" before "make", and substituted "centers" for "facilities"; inserted subsections (2) through (4); and in (5), inserted "Upon request, the department shall", deleted "upon request" after "consultation", inserted "and registrant" after "licensee", and substituted "program" for "facility"; and made minor changes in phraseology.

53-4-512. Licensees or registrants to maintain records, furnish reports, and permit inspections. It shall be the duty of every applicant for a license or for registration and every licensee or registrant to give the right of entrance to and inspection of premises to representatives of the department at reasonable times, to keep and maintain such records as the department may prescribe, to permit inspection of these records, and to report to the department such facts as may be required on forms furnished by the department.

History: **En. Sec. 9, Ch. 247, L. 1965; amd. Sec. 49, Ch. 121, L. 1974; R.C.M. 1947, 10-809(part); amd. Sec. 13, Ch. 606, L. 1981.**

Compiler's Comments

1981 Amendment: Inserted "for a license or for registration" after "applicant", inserted "or registrant" after "licensee", substituted "forms" for "blanks" near the end, and made minor changes in grammar.

53-4-513. Denial, cancellation, reduction, revocation, and nonrenewal of licenses and registration certificates — fair hearing. (1) The department, after written notice to the applicant, licensee, or registrant, may deny, suspend, cancel, reduce, modify, or revoke a license or registration certificate upon finding that:

(a) any of the applicable conditions set forth in this part as prerequisites for the issuance of a license or registration certificate no longer exist;

(b) the licensee or registrant is no longer in compliance with the minimum standards prescribed by the department; or

(c) the license or registration certificate was issued upon fraudulent or untrue representation.

(2) The applicant, licensee, or registrant by written request may invoke the opportunity for hearing on the department's action by requesting a hearing within 10 days of notice of department action. The hearing shall be conducted according to the department's rules.

History: **En. Sec. 10, Ch. 247, L. 1965; amd. Sec. 8, Ch. 121, L. 1974; R.C.M. 1947, 10-810; amd. Sec. 14, Ch. 606, L. 1981.**

Compiler's Comments

1981 Amendment: In (1), inserted "written" before "notice", deleted "and opportunity for hearing" after "notice", inserted "or registrant" after "licensee", inserted "cancel, reduce, modify", substituted "or registration certificate . . . untrue representation" for "in any case in which it finds that there has been a substantial failure to comply with the requirements established under this law"; added subsection (2); and made minor changes in phraseology.

53-4-514. Payments for eligible children. The department shall pay a daily rate established by the department and appropriated by the legislature to a day-care facility licensed or registered by the department for each child receiving day-care service and certified eligible by the department to receive day-care services.

History: **En. 10-812 by Sec. 1, Ch. 167, L. 1975; R.C.M. 1947, 10-812; amd. Sec. 1, Ch. 662, L. 1979; amd. Sec. 15, Ch. 606, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted present language of section for "The department shall pay to a licensed day-care facility for each child eligible to receive public financial support not less than $4.50 until December 31, 1980, and $5 thereafter for each day the child attends the facility. For those day-care facilities which meet federal requirements, the department shall pay an additional $1 per day for each eligible child."

53-4-515. Penalty — remedies. (1) A person, group of persons, or corporation who establishes or maintains a day-care center or assists in conducting or maintaining a day-care center without first obtaining a license from the department as provided for in this part is guilty of a misdemeanor and upon conviction is punishable by a fine not to exceed $500.

(2) (a) If the department is advised or has reason to believe that a person, group of persons, or corporation is operating a day-care facility without a license or registration certificate, it shall make an investigation to ascertain the facts. If the department finds that the day-care facility is being or has been operated without a license or registration certificate, it may report the results of its investigation to the attorney general or the county attorney of the county where the day-care facility is being operated for prosecution and request that an injunction be issued against the facility until a license or certificate is issued.

(b) The department may institute any action necessary to enforce compliance with this part or any order or rule of the department under this part or to obtain a judicial interpretation of any of the foregoing.

(c) The department may, by its own attorney or counsel, any county attorney, or the attorney general, initiate an action in the district court of the appropriate county and be represented by such representative on appeal to the supreme court of Montana.

History: (1)En. Sec. 18, Ch. 606, L. 1981; (2)En. Sec. 11, Ch. 247, L. 1965; amd. Sec. 9, Ch. 121, L. 1974; R.C.M. 1947, 10-811; amd. Sec. 16, Ch. 606, L. 1981.

Compiler's Comments

1981 Amendment: In (2)(a), changed "child-care" to "day-care" in three places, inserted "or registration certificate" after "license" in two places, substituted "the department" for "it" before "finds", inserted "or certificate" before "is issued" at the end; substituted present (2)(c) for "The department may institute action by its own attorney or counsel or may call upon any county attorney to represent it in the district court of the county in which the action is taken or the attorney general to represent it on appeal to the supreme court of Montana or it may associate its own counsel with either in any court"; and made minor changes in grammar and punctuation.

Codification Instruction: Section 19, Ch. 606, L. 1981, provided: "Sections 1 [53-4-501(1)] and 18 [53-4-515(1)] are intended to be codified as an integral part of Title 53, chapter 4, part 5, and the provisions of Title 53, chapter 4, part 5, apply to sections 1 and 18."

53-4-516. Repealed. Sec. 1, Ch. 162, L. 1981.

History: En. Secs. 1, 3, Ch. 637, L. 1979; amd. Sec. 17, Ch. 606, L. 1981.

CHAPTER 5

ADULT SERVICES

Part 1 — Problems of Aging

Section

53-5-101. Functions of department of social and rehabilitation services.
53-5-102. Grants and gifts to department.

Part 2 — Protective Services

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53-5-202. Definitions.
53-5-203. Purpose.
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Part 3 — Adult Foster Family Care

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53-5-303. Purpose.
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53-5-305. Limitation on care offered.

Part 4 — Old-Age Assistance Recovery

53-5-401. Old-age assistance recovery.

Chapter Compiler's Comments

1981 Appropriations Act — Open Meetings — Area Agency: Section 19, HB 500 (1981), provided in part: "The governing body of any area agency on aging that contracts with SRS shall conduct its business in open meetings as required by Title 2, chapter 3, MCA."

Part 1

Problems of Aging

53-5-101. Functions of department of social and rehabilitation services. The department of social and rehabilitation services shall:

(1) consult with and advise organized efforts by communities, organizations, associations, and groups that are working toward any forms of assistance to problems of aging;

(2) study and identify problems of aging;

(3) review existing programs for the aging and make recommendations to the governor and the legislature for improvements in such programs;

(4) encourage the sponsorship of community projects which will seek to make optimum use of the time and talents of retired persons;

(5) coordinate, through area councils on aging, the delivery of community-based care, including but not limited to home health care, homemaker services, foster home care, nutrition, transportation, winterization, information and referral, and recreation.

History: En. Sec. 4, Ch. 73, L. 1965; amd. Sec. 4, Ch. 12, L. 1967; Sec. 82-3504, R.C.M. 1947; amd. and redes. 71-2001 by Sec. 43, Ch. 121, L. 1974; R.C.M. 1947, 71-2301; amd. Sec. 1, Ch. 665, L. 1979.

53-5-102. Grants and gifts to department. The department of social and rehabilitation services may receive on behalf of the state any grant from the federal government or any grant or gift from any source and accept the grant or gift so that the title shall pass to the state. All grants, grants-in-aid, or gifts shall be deposited with the state treasurer and shall be continuously available to the department.

History: En. Sec. 5, Ch. 73, L. 1965; amd. Sec. 5, Ch. 12, L. 1967; Sec. 82-3505, R.C.M. 1947; amd. and redes. 71-2002 by Sec. 44, Ch. 121, L. 1974; R.C.M. 1947, 71-2302.

Part 2

Protective Services

53-5-201. Short title. This part may be cited as the "Protective Services Act for Aged Persons or Disabled Adults".

History: En. 71-1914 by Sec. 1, Ch. 232, L. 1975; R.C.M. 1947, 71-1914.

53-5-202. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of social and rehabilitation services.

(2) "Aged person" means an aged person as defined by the department.

(3) "Disabled adult" means a person 18 years of age or over who is defined by the department as disabled but not developmentally disabled.

(4) "Protective services" means assistance to an aged person or disabled adult in obtaining the services offered by the department.

History: En. 71-1915 by Sec. 2, Ch. 232, L. 1975; R.C.M. 1947, 71-1915.

53-5-203. Purpose. To ensure that aged persons or disabled adults in the state be afforded the opportunity to receive protective services and to implement certain provisions of the federal government's Title XX, Social Services Amendments of 1972, this legislature declares the department to be recognized as the public agency responsible for providing those services.

History: En. 71-1916 by Sec. 3, Ch. 232, L. 1975; R.C.M. 1947, 71-1916.

53-5-204. Duties of department. The department shall be responsible for acting on requests for protective services from aged persons or disabled adults or from relatives, friends, or other reputable persons requesting those services on behalf of an aged person or disabled adult.

History: En. 71-1917 by Sec. 4, Ch. 232, L. 1975; R.C.M. 1947, 71-1917.

53-5-205. Departmental authority. The department may implement a program for protective services by establishing appropriate rules which are not inconsistent with the department's activities.

History: En. 71-1918 by Sec. 5, Ch. 232, L. 1975; R.C.M. 1947, 71-1918.

53-5-206. Annual reports. The department shall make annual reports on the number of people served by this part and the type of protective services made available to the aged persons and disabled adults of Montana.

History: En. 71-1919 by Sec. 6, Ch. 232, L. 1975; R.C.M. 1947, 71-1919.

53-5-207. Protective services not creating guardianship or conservatorship. The provision of protective services does not create a guardianship or conservatorship relationship between the department and the aged person unless a guardianship or conservatorship is created in accordance with the requirements of Title 72, chapter 5, part 3 or 4.

History: En. Sec. 7, Ch. 343, L. 1981.

Compiler's Comments

Codification Instruction: Subsection (2), sec. 8, Ch. 343, L. 1981, provided: "Section 7 is intended to be codified as an integral part of Title 53, chapter 5, part 2, and the provisions of Title 53, chapter 5, part 2, apply to section 7."

Part 3

Adult Foster Family Care

53-5-301. Short title. This part may be cited as the "Adult Foster Family Care Act".

History: En. 71-2303 by Sec. 1, Ch. 364, L. 1975; R.C.M. 1947, 71-2303.

53-5-302. Definitions. As used in this part, the following definitions apply:

(1) "Adult foster family care homes" means private homes owned by one or more persons 18 years of age or older which offer light personal care or custodial care to disabled adults who are not related to the owner by blood or marriage or which offer light personal care or custodial care to aged persons.

(2) "Aged person" means a person defined by the department as aged.

(3) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult so as to provide for his basic needs of food and shelter and having a specific person available to help him meet his basic needs.

(4) "Department" means the department of social and rehabilitation services.

(5) "Disabled adult" means a person 18 years of age or older defined by the department as disabled.

(6) "Light personal care" means assisting the aged person or disabled adult in accomplishing such personal hygiene tasks as bathing, dressing, hair grooming, and supervision of prescriptive medicine administration, but not administration of prescriptive medications.

(7) "Skilled nursing care" means 24-hour care supervised by a registered nurse or a licensed practical nurse under orders of an attending physician.

History: En. 71-2304 by Sec. 2, Ch. 364, L. 1975; amd. Sec. 40, Ch. 37, L. 1977; R.C.M. 1947, 71-2304; amd. Sec. 2, Ch. 665, L. 1979.

53-5-303. Purpose. In order to ensure the proper care of aged persons or disabled adults in foster family care homes and to implement provisions of Title XX of the Social Security Act, Public Law 93-647, the department may obtain, license, and supervise adult foster family care homes for four or fewer aged persons or disabled adults in need of such care.

History: En. 71-2305 by Sec. 3, Ch. 364, L. 1975; R.C.M. 1947, 71-2305; amd. Sec. 10, Ch. 38, L. 1979; amd. Sec. 3, Ch. 665, L. 1979.

53-5-304. Standards for adult foster family care homes. The department may establish by rules standards by which private residences may be licensed as adult foster family care homes. These standards shall provide for the safety and comfort of the residents and are subject to the advice and recommendations of the state fire marshal of the department of justice in relation to fire and safety requirements.

History: En. 71-2306 by Sec. 4, Ch. 364, L. 1975; R.C.M. 1947, 71-2306; amd. Sec. 11, Ch. 38, L. 1979; amd. Sec. 3, Ch. 199, L. 1979.

Compiler's Comments

Statement of Intent. The statement of intent attached to Ch. 199, L. 1979, provided: "A statement of intent is required for this bill in that it delegates authority to adopt rules in sections 1 through 4.

1. Under present law, SRS has express rulemaking authority to carry out most of its duties under Title 53. The Department's present authority includes the power to adopt rules to implement and carry out the following: child welfare services; Aid to Dependent Children programs; subsidized adoption; protective services for adults; Medical Assistance programs; sheltered workshop programs; community based services; community homes and protective services for the developmentally disabled; and vocational rehabilitation programs.

2. While there are duties for which SRS has express rulemaking authority, there also are duties for which the Department's rulemaking authority could only be implied. The Montana Administrative Procedure Act, Section 2-4-102(11)(a), MCA, requires that substantive

rules be adopted under express authority in order to be valid. Under an agreement with the Administrative Code Committee, SRS introduced legislation to eliminate this gap in the Department's express authority. This bill gives SRS express rulemaking authority to adopt rules to comply with federal law; to carry out its responsibilities for public welfare; and to administer vocational rehabilitation for the blind.

3. The express authority given to SRS under this bill will allow the Department to adopt rules which cover the following areas: eligibility requirements for various services; scope of services to be offered; specific criteria that providers of services must meet to qualify as providers; how, when, and in what form various types of assistance will be offered; and procedure for applying for and receiving aid. The area of social services is a field which evolves as the needs of the population change. Federal programs and their concomitant regulations are constantly being revised and altered. This legislation allows SRS to adapt the specifics of its social services programs to meet those federal changes but within the confines of state law."

53-5-305. Limitation on care offered. The type of care offered by adult foster family care homes for the purposes of this part is light personal care or custodial care and does not include skilled nursing care.

History: En. 71-2307 by Sec. 5, Ch. 364, L. 1975; R.C.M. 1947, 71-2307.

Part 4

Old-Age Assistance Recovery

53-5-401. Old-age assistance recovery. (1) Upon the death of any recipient of old-age assistance, the department of social and rehabilitation services shall execute and present a claim against the estate of such person within the time specified in the published notice to creditors in the estate matter for the total amount of assistance paid under Chapter 82, Laws of 1937, as amended. No claim shall be enforced against any real estate of a recipient while it is occupied by the surviving spouse or dependent as a home.

(2) Every transfer of property made by deed, grant, bargain, sale, or gift by any recipient of old-age assistance and recorded subsequent to his having received such assistance shall be presumed to have been made without fair consideration, as the term "fair consideration" is defined by 31-2-303, and with the intent to defeat the purposes of this section. These presumptions are disputable and may be controverted by competent evidence.

(3) If the federal law so requires, the federal government shall be entitled to a share of any amounts collected from recipients or their estates in proportion to the amount which it has contributed to the grants recovered, and the amount due the United States shall be promptly paid by the state to the United States government. The remaining portion of the amount collected shall be distributed to the state and county in proportion to the total amount paid by each.

History: En. Sec. 11, Part 3, Ch. 82, L. 1937; amd. Sec. 1, Ch. 178, L. 1943; amd. Sec. 1, Ch. 63, L. 1947; amd. Sec. 1, Ch. 234, L. 1953; R.C.M. 1947, 71-412.

CHAPTER 6

MEDICAL SERVICES

Part 1 — Medical Assistance—Medicaid

Section
53-6-101. Definition of medical assistance.
53-6-102. Mandate to fully provide services.

53-6-103. State plan and operation of medical assistance to be in effect and uniform throughout state.
53-6-104. Freedom of doctors to treat recipients of medical assistance — freedom to select doctor.
53-6-105. Discrimination prohibited.
Sections 53-6-106 through 53-6-110 reserved.
53-6-111. Department charged with general administration of medical assistance — adoption of rules to punish fraud.
53-6-112. Department to print and distribute copies of part and certain forms.
53-6-113. Department to adopt rules.
53-6-114. Rules of department binding on county welfare departments.
53-6-115. Contracts with other agencies.
Sections 53-6-116 through 53-6-120 reserved.
53-6-121. County department charged with local administration of medical assistance.
Sections 53-6-122 through 53-6-130 reserved.
53-6-131. Eligibility requirements.
53-6-132. Application for assistance.
53-6-133. Investigation and determination of eligibility.
Sections 53-6-134 through 53-6-140 reserved.
53-6-141. Amount, scope, and duration of assistance.
53-6-142. Periodic review of assistance.
53-6-143. Exclusion of liens — recoveries.
53-6-144. Relative's responsibility.

Part 2 — Renal Disease Treatment Program

53-6-201. Legislative intent.
53-6-202. Establishment of program.

Part 3 — Galen State Hospital

53-6-301. Location and primary function of hospital.
53-6-302. Qualifications of superintendent.
53-6-303. Transfer of patients from Galen to mental institution.
53-6-304. Alcoholic treatment center.

Chapter Compiler's Comments

1981 Appropriations Act — Medical Services — Priorities: Section 19, HB 500 (1981), provided in part: "If appropriated funds are not sufficient to provide medical care for all eligible persons, the department shall use the following priorities in keeping expenditures within appropriations:

(1) limit the increases in reimbursement paid per service for medical care to no more than 10% for each fiscal year of the 1983 biennium to the maximum extent feasible; and

(2) limit eligibility and amount, scope, and duration of medical services provided."

Part 1

Medical Assistance — Medicaid

53-6-101. Definition of medical assistance. (1) The definition of medical assistance shall include:

(a) inpatient hospital services;

(b) outpatient hospital services;

(c) other laboratory and x-ray services;

(d) skilled nursing home services;

(e) physicians' services, whether furnished in the office, the patient's home, a hospital, a skilled nursing home, or elsewhere.

(2) It may also include, although not necessarily limited to, the following:

(a) medical care or any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law;

(b) home health care services;

(c) private-duty nursing services;

(d) dental services;

(e) physical therapy and other related services;

(f) clinic services;

(g) prescribed drugs, dentures, and prosthetic devices;

(h) eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select;

(i) other diagnostic, screening, preventive, rehabilitative, chiropractic, and osteopathic services;

(j) any additional medical service or aid allowable under or provided by the federal Social Security Act.

History: **En. Sec. 2, Ch. 325, L. 1967; amd. Sec. 1, Ch. 261, L. 1971; R.C.M. 1947, 71-1512(part).**

53-6-102. Mandate to fully provide services. Medical services shall be provided to the fullest extent that moneys appropriated, collected, accumulated, or matched from any source by the department of social and rehabilitation services will allow. If funds are inadequate, priorities of the foregoing items and amounts of medical assistance shall be determined by the department. The department shall establish standards of assistance.

History: **En. Sec. 2, Ch. 325, L. 1967; amd. Sec. 1, Ch. 261, L. 1971; R.C.M. 1947, 71-1512(part).**

53-6-103. State plan and operation of medical assistance to be in effect and uniform throughout state. It is hereby mandatory and required that the state plan and operation of medical assistance shall be in effect in each and every county of the state, and the administration and supervision of medical assistance shall be uniform throughout the several counties of the state.

History: **En. Sec. 1, Ch. 325, L. 1967; amd. Secs. 47 and 48, Ch. 121, L. 1974; R.C.M. 1947, 71-1511(3).**

53-6-104. Freedom of doctors to treat recipients of medical assistance — freedom to select doctor. The department of social and rehabilitation services shall provide for professional freedom of those licensed practitioners who provide medical assistance under this part and provide reasonable freedom of choice to recipients of medical aid to select the vendor or provider of medical care, services, or prescribed drugs.

History: **En. Sec. 4, Ch. 325, L. 1967; R.C.M. 1947, 71-1514.**

53-6-105. Discrimination prohibited. No discrimination shall be practiced or asserted against any applicant for or recipient of care and services under this part on the basis of race, color, or national origin, and the furnishing of care and services under this part to any applicant or recipient thereof shall not be delayed or denied on the basis of race, color, or national origin.

History: **En. Sec. 16, Ch. 325, L. 1967; R.C.M. 1947, 71-1526.**

53-6-106 through 53-6-110 reserved.

53-6-111. Department charged with general administration of medical assistance — adoption of rules to punish fraud. (1) The department of social and rehabilitation services is hereby authorized and empowered to administer and supervise a vendor payment program of medical assistance under the powers, duties, and functions provided in chapter 2 of this title, as amended, and as contemplated by the provisions of Title XIX of the federal Social Security Act.

(2) The department shall adopt rules establishing a system of penalties and sanctions applicable to providers of medical assistance services and supplies who engage in fraudulent, abusive, or improper activities. The department shall define by rule those activities which are fraudulent, abusive, or improper.

(3) The penalties or sanctions imposed include but are not limited to:

(a) required courses of education in the rules governing the medicaid program;

(b) withholding of payments to offset previous improper payments to a provider;

(c) suspension of payments to a provider pending resolution of a dispute involving fraudulent, abusive, or improper activities;

(d) suspension of participation in the program for a specified period of time; and

(e) permanent termination of participation in the medical assistance program.

(4) The department is entitled to recover from a provider all amounts paid as a result of fraudulent, abusive, or improper activities, together with interest at the rate set by 15-30-142 for tax deficiencies from the date of such payment.

(5) In all cases in which a penalty or sanction may be imposed, a provider is entitled to a hearing under the provisions of Title 2, chapter 4, part 6.

History: En. Sec. 1, Ch. 325, L. 1967; amd. Secs. 47, 48, Ch. 121, L. 1974; R.C.M. 1947, 71-1511(1); amd. Sec. 1, Ch. 276, L. 1979.

Compiler's Comments

Statement of intent. The statement of intent adopted with Ch. 276, L. 1979, provided: "A statement of intent is required for this bill because it amends section 53-6-111, MCA, to authorize the Department of Social and Rehabilitation Services to adopt rules in subsections (2) through (5).

Under present law, SRS has express rulemaking authority to administer and supervise the state's medical assistance program under Title 53 of the MCA. There is no express rulemaking authority for the Department to adopt rules establishing penalties and sanctions applicable to providers of medical assistance services and supplies who engage in fraudulent, abusive, or improper activities. The Montana Administrative Procedure Act, section 2-4-102(11)(a), MCA, requires that substantive rules be adopted under expressly delegated authority in order to be valid.

Federal regulations require the state to suspend or terminate from the Medicaid program any provider who has also been terminated from the Medicare program or lose federal financial participation in Medicaid payments to those providers. If SRS does not have the authority to suspend or terminate those providers, the state must continue to pay them but without federal funds which presently amount to 63 percent of the payments. Additional funds from the state's general fund would be needed to pay those providers of medical assistance in Montana.

The intent of this bill is to grant to the Department of Social and Rehabilitation Services express authority to adopt rules establishing penalties and sanctions as enumerated in subsections (3) through (5) and the flexibility to comply with federal regulations and to adopt additional penalties and sanctions necessary to provide uninterrupted access to medical care and supplies in areas of Montana where alternative sources are unavailable."

53-6-112. Department to print and distribute copies of part and certain forms. The department of social and rehabilitation services shall have printed and distribute copies of this part to all county welfare departments and shall prescribe the form of and print and supply to the county welfare departments blanks of applications, reports, and such other forms as may be necessary in relation to medical assistance.

History: En. Sec. 1, Ch. 325, L. 1967; amd. Secs. 47 and 48, Ch. 121, L. 1974; R.C.M. 1947, 71-1511(4).

53-6-113. Department to adopt rules. The department of social and rehabilitation services shall adopt appropriate rules not inconsistent with this part to administer and supervise the program uniformly throughout the state and shall define medical assistance by rules. Medical assistance shall be furnished through payments to providers of services and supplies as contemplated in this part.

History: En. Sec. 1, Ch. 325, L. 1967; amd. Secs. 47 and 48, Ch. 121, L. 1974; R.C.M. 1947, 71-1511(6).

53-6-114. Rules of department binding on county welfare departments. All rules of the department of social and rehabilitation services made under this part shall be binding upon the county departments of public welfare.

History: En. Sec. 1, Ch. 325, L. 1967; amd. Secs. 47 and 48, Ch. 121, L. 1974; R.C.M. 1947, 71-1511(5).

53-6-115. Contracts with other agencies. The department of social and rehabilitation services may by suitable rules provide for contracting with any state or private agency for processing and payment of claims under such program of medical assistance, and the department shall have the authority to contract with one or more private or state agencies to provide any or all of the enumerated medical services.

History: En. Sec. 5, Ch. 325, L. 1967; amd. Sec. 49, Ch. 121, L. 1974; R.C.M. 1947, 71-1515.

53-6-116 through 53-6-120 reserved.

53-6-121. County department charged with local administration of medical assistance. The county department of public welfare shall be charged with the local administration and supervision of medical assistance subject to the powers, duties, and functions prescribed for the county department in chapter 2 of this title.

History: En. Sec. 1, Ch. 325, L. 1967; amd. Secs. 47 and 48, Ch. 121, L. 1974; R.C.M. 1947, 71-1511(2).

53-6-122 through 53-6-130 reserved.

53-6-131. Eligibility requirements. (1) Medical assistance may be granted to a person who resides in the state of Montana, including a resident temporarily absent from the state and who meets the requirements of one or more of the following categories:

(a) he receives all or part of his income from federally funded supplemental security income assistance or aid to dependent children;

(b) upon application, he would be eligible for financial assistance under any one of the federally aided programs referred to above;

(c) he would be entitled to financial assistance under one of the federally aided categories except that he does not meet the durational residence requirements or relative responsibility requirements of any of the public assistance programs above enumerated;

(d) he is in a medical institution and if he were no longer in such institution he would be eligible for financial assistance under one of the above programs;

(e) he is under 21 years of age and meets the conditions of eligibility in the state's plan for aid to dependent children, other than with respect to school attendance;

(f) he is under 21 years of age and in foster care under the supervision of the state;

(g) he has income less than 133 ⅓% of the amounts specified as maximum income levels for federally aided categories of assistance;

(h) he is under 21 years of age and medically needy, as defined by the department of social and rehabilitation services; or

(i) he is under 21 years of age, was in foster care under the supervision of the state, and has been adopted as a "hard-to-place" child.

(2) The department of social and rehabilitation services may by rule establish more restrictive property ownership eligibility criteria than required by federal law for federally aided categories of public assistance.

History: En. Sec. 6, Ch. 325, L. 1967; amd. Sec. 2, Ch. 261, L. 1971; amd. Sec. 1, Ch. 20, L. 1973; amd. Sec. 2, Ch. 277, L. 1973; amd. Sec. 38, Ch. 37, L. 1977; R.C.M. 1947, 71-1516; amd. Sec. 1, Ch. 399, L. 1981.

Compiler's Comments

1981 Amendment: Changed "shall" to "may" near the beginning of (1); changed "federally aided public assistance programs: old age assistance, aid to the blind, aid to dependent children, and aid to the permanently and totally disabled" to "federally funded supplemental security income assistance or aid to dependent children" in (1)(a); added subsection (2); and made minor changes in phraseology.

Effective Date: Section 2, Ch. 399, L. 1981, provided: "This act is effective on passage and approval." Approved April 17, 1981.

Statement of Intent: The statement of intent attached to HB 127 (Ch. 399, L. 1981) provided: "The bill as amended gives the Department of Social and Rehabilitation Services rulemaking authority to grant medical assistance to one or more categories of persons who are eligible for federal financial assistance. These categories include supplemental security income assistance, aid to dependent children, and aid to certain others who may be in financial distress due to high medical expenditures. Furthermore, the bill gives the Department the authority to adopt rules that include eligibility criteria that are more restrictive than federal criteria.

Under present law, the Department must grant medical assistance to all persons in the categories listed in 53-6-131, MCA. The Department presently has express rulemaking authority to adopt rules to include federal eligibility requirements for each category and to define medical assistance but does not have authority to limit services by category of persons.

The availability of federal financial assistance as well as federal eligibility criteria will probably be changed next fiscal year. The Department needs to have the authority to redetermine eligibility criteria and to limit the categories of persons to whom medical assistance will be made available in order to choose the options which offer the most efficient and least costly eligibility system within financial limits."

53-6-132. Application for assistance. Application for assistance under this part shall be made to the office of the county department in the county in which the person is residing. The application shall be presented in the manner on the form prescribed by the department of social and rehabilitation services. All individuals wishing to apply shall have the opportunity to do so.

History: En. Sec. 8, Ch. 325, L. 1967; R.C.M. 1947, 71-1518.

53-6-133. Investigation and determination of eligibility. (1) The county department shall promptly investigate and determine the eligibility of each applicant under this part in accordance with the rules of the department of social and rehabilitation services. Each applicant shall be informed of his right to a fair hearing and of the confidential nature of the information given. The county department shall determine whether or not the applicant is eligible for assistance under this part, and aid shall be furnished promptly to eligible persons. The county public welfare board shall review the determination of the eligibility or noneligibility made by the county department. Each applicant shall receive written notice of the decision concerning his application, and right of appeal shall be secured to the applicant under the procedures of 53-2-606.

(2) The county departments of public welfare and the department of social and rehabilitation services are hereby authorized to accept the federal social security administration's determination of eligibility for supplemental security income, Title XVI of the Social Security Act, as qualifying such eligible individuals to receive medical assistance under this part.

History: En. Sec. 10, Ch. 325, L. 1967; amd. Sec. 1, Ch. 181, L. 1974; amd. Sec. 1, Ch. 327, L. 1977; R.C.M. 1947, 71-1520.

53-6-134 through 53-6-140 reserved.

53-6-141. Amount, scope, and duration of assistance. (1) The amount, scope, and duration of medical assistance granted eligible persons shall be determined by the department of social and rehabilitation services. Payments on behalf of persons in state-operated institutions shall be made only from funds appropriated specifically for this purpose, as such funds are available.

(2) If available funds are not sufficient to provide medical care for all eligible persons, the department shall have the authority to set priorities to limit, reduce, or otherwise curtail the amount, scope, or duration of the medical care and services made available.

(3) For the purpose of determining eligibility and amount of assistance to be granted to those individuals covered in subsections (2)(g) and (2)(h) of 53-6-131, the department shall establish a maintenance standard.

History: En. Sec. 7, Ch. 325, L. 1967; amd. Sec. 3, Ch. 261, L. 1971; amd. Sec. 2, Ch. 20, L. 1973; R.C.M. 1947, 71-1517; amd. Sec. 1, Ch. 562, L. 1979.

53-6-142. Periodic review of assistance. All medical assistance cases approved under this part shall be reviewed as often as shall be required under the rules of the department of social and rehabilitation services.

History: En. Sec. 11, Ch. 325, L. 1967; R.C.M. 1947, 71-1521.

53-6-143. Exclusion of liens — recoveries. No applicant hereunder may be required to execute an agreement for lien on his real property. No lien may be imposed against the property of an individual prior to his death on account of medical assistance paid or to be paid on his behalf (except pursuant to the judgment of a court on account of benefits incorrectly paid on behalf of the individual). There may be no adjustment or recovery (except, in the case of an individual who was 65 years of age or older when he received the assistance, from his estate and then only after the death of his surviving spouse, if any, and only at a time when he has no surviving child who is under age 18 or is blind or permanently and totally disabled) of any medical assistance correctly paid on behalf of an individual. To the extent necessary for reimbursement of medical assistance paid to an individual, the department of social and rehabilitation services is subrogated to the rights of the individual to recover from a third party who may be liable to pay the medical expenses, as provided in 53-2-612. Recoveries shall be prorated to the federal government and the state in the proportion to which each contributed to the medical assistance. Recovery for medical assistance paid prior to July 1, 1974, shall be prorated to reimburse the county share of participation. The provisions of this section are hereby extended to provide for the recovery of all medical assistance paid under this part and likewise to all medical aid to the aged assistance paid by the department of social and rehabilitation services during the period of time July 1, 1965, through June 30, 1967.

History: **En. Sec. 14, Ch. 325, L. 1967; amd. Sec. 1, Ch. 249, L. 1969; amd. Sec. 1, Ch. 279, L. 1974; amd. Sec. 5, Ch. 379, L. 1977; R.C.M. 1947, 71-1524.**

53-6-144. Relative's responsibility. The provisions of other parts of this title, as amended, notwithstanding, the only relatives that can be held responsible for payment of medical assistance under the program are the husband or wife of the individual, the parents of children under age 18, and the parents of blind or disabled persons over age 18.

History: **En. Sec. 15, Ch. 325, L. 1967; amd. Sec. 15, Ch. 423, L. 1971; R.C.M. 1947, 71-1525.**

Part 2

Renal Disease Treatment Program

53-6-201. Legislative intent. It is the intent of the legislature to insure the establishment of a program for the care and treatment of persons suffering from chronic renal diseases who require lifesaving care and treatment for such renal diseases but who are unable to pay for the services on a continuing basis.

History: **En. 71-2501 by Sec. 1, Ch. 453, L. 1975; R.C.M. 1947, 71-2501.**

53-6-202. Establishment of program. The department of social and rehabilitation services shall establish a program to provide treatment to persons suffering from chronic renal diseases, including dialysis and other medical procedures and techniques, which will have a lifesaving effect in the care and treatment of such persons. The department shall extend financial assistance to persons suffering from chronic renal diseases in obtaining the medical, nursing, pharmaceutical, and technical services necessary to care for such diseases, including the rental or purchase of home dialysis equipment and supplies. The department shall establish standards for determining eligibility for care and treatment under this program in order that treatment shall be provided to those who are financially unable to obtain such treatment without causing severe economic imbalance in the family economic unit. Such standards shall be established without reference to maximum or minimum income levels.

History: **En. 71-2502 by Sec. 2, Ch. 453, L. 1975; R.C.M. 1947, 71-2502.**

Part 3

Galen State Hospital

53-6-301. Location and primary function of hospital. (1) The institution located at Galen is the Galen state hospital and as its primary function provides:

(a) treatment of tuberculosis and silicosis (commonly called miner's consumption);

(b) detoxification, diagnosis, treatment, and referral for those persons who seek relief from the illness of alcoholism.

(2) If there are space and funds available, the hospital shall also treat the following:

(a) emphysema, bronchiectasis, carcinoma of the lung, and other diseases of the lung pertaining to pulmonary disorders;

(b) geriatric and senile patients afflicted with pulmonary disorders and patients who are residents of another state institution, as defined in 53-1-101(4).

History: En. Sec. 17, Ch. 199, L. 1965; amd. Sec. 5, Ch. 320, L. 1967; amd. Sec. 1, Ch. 90, L. 1974; R.C.M. 1947, 80-1701.

53-6-302. Qualifications of superintendent. The superintendent of Galen state hospital shall be an individual with a minimum of 3 years' full-time hospital administration experience and who is either:

(1) a physician legally qualified to practice medicine in Montana; or

(2) a person with a master's degree in hospital administration, business, or in a health care- or human services-related field.

History: En. Sec. 18, Ch. 199, L. 1965; amd. Sec. 6, Ch. 320, L. 1967; R.C.M. 1947, 80-1702; amd. Sec. 1, Ch. 285, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "a physician legally qualified to practice medicine in Montana with at least 4 years in the practice of his profession, including at least 1 year's experience in a general hospital" following "The superintendent of Galen state hospital shall be"; and added the balance of the section.

53-6-303. Transfer of patients from Galen to mental institution. A mentally retarded or mentally ill person residing at Galen state hospital may be transferred to the Warm Springs state hospital, the Montana center for the aged, or the Boulder River school and hospital with the approval of the department of institutions if the department determines that the transfer will be in the best interests of the patient. Unless a medical or psychiatric emergency exists, 15 days prior to the transfer the department shall send notice of the proposed transfer to the patient's parent, guardian, or spouse or, if none is known, his nearest relative or friend. In the case of an emergency transfer, the department shall send notice within 72 hours after the time of transfer.

History: En. Sec. 19, Ch. 199, L. 1965; amd. Sec. 7, Ch. 320, L. 1967; R.C.M. 1947, 80-1703.

53-6-304. Alcoholic treatment center. (1) There is an alcoholic treatment center located at the Galen state hospital. The admittance and discharge procedures for alcoholics are the same as for ill persons.

(2) As used in this section:

(a) "alcoholism" means a chronic illness or disorder of behavior characterized by repeated drinking of alcoholic beverages to an extent which endangers the drinker's health, interpersonal relations, or economic functioning or to an extent which endangers the public health, welfare, or safety;

(b) an "alcoholic" is a person suffering from the illness of alcoholism.

(3) The alcoholic treatment center shall provide care, evaluation, treatment, referral, and rehabilitation to persons in Montana who are referred for the treatment of the illness of alcoholism or the complications thereof.

History: En. Sec. 70, Ch. 199, L. 1965; amd. Sec. 33, Ch. 320, L. 1967; Sec. 80-2404, R.C.M. 1947; amd. and redes. 80-1705 by Sec. 2, Ch. 90, L. 1974; R.C.M. 1947, 80-1705; amd. Sec. 1, Ch. 284, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "alcoholic treatment" for "alcoholism services" in (1) and (3); substituted "treatment" for "arrestment" in (3); combined former subsection (3)(a) with (3) after "center shall"; deleted former subsections (3)(b) through (3)(f) relating to other duties of the alcoholic treatment center.

CHAPTER 7

VOCATIONAL REHABILITATION

Part 1 — General Vocational Rehabilitation

Section

53-7-101. Definitions.
53-7-102. Powers and duties of department.
53-7-103. Department to cooperate with federal government.
53-7-104. Receipt and disbursement of rehabilitation funds.
53-7-105. Eligibility.
53-7-106. Hearings.
53-7-107. Limitation of political activity.

Part 2 — Sheltered Workshops

53-7-201. Legislative findings and purpose.
53-7-202. Definitions.
53-7-203. Purchase of sheltered employment services.
53-7-204. Use of federal funds.

Part 3 — Vocational Rehabilitation of the Blind

53-7-301. Definitions.
53-7-302. Administration.
53-7-303. Cooperation with federal government.
53-7-304. Receipt and disbursement of federal funds.
53-7-305. Acceptance of gifts.
53-7-306. Vocational rehabilitation services.
53-7-307. Rehabilitation services.
53-7-308. Division share of vocational rehabilitation funds.
53-7-309. State plan for visual services.

Part 1

General Vocational Rehabilitation

53-7-101. Definitions. As used in this part, the following definitions apply:

(1) "Disabled individual" means a person with an impairment of a physical or mental nature that can be diagnosed by a physician or appropriate specialist.

(2) "Employment handicap" means a physical or mental condition which constitutes, contributes to, or if not corrected will probably result in an obstruction to occupational performance.

(3) "Maintenance" means money payments not exceeding the estimated cost of subsistence during vocational rehabilitation.

(4) "Occupational licenses" means licenses, permits, or other written authority required by any governmental unit to be obtained in order to engage in an occupation.

(5) "Physical restoration" means any medical, surgical, or therapeutic treatment necessary to correct or substantially reduce a disabled individual's employment handicap within a reasonable length of time, including but not limited to medical, psychiatric, dental, and surgical treatment, nursing services, hospital care, convalescent home care, drugs, medical and surgical supplies, and prosthetic appliances but excluding curative treatment for acute or transitory conditions (except medical care for acute conditions during the course of a rehabilitation plan which, if not corrected, would constitute a hazard to plan completion).

(6) "Prosthetic appliance" means an artificial device necessary to support or take the place of a part of the body or to increase the acuity of a sense organ.

(7) "Regulations" means regulations made by the department of social and rehabilitation services.

(8) "Rehabilitation plan" means a plan for providing services that will render a disabled individual employable and is jointly developed by the client and the department of social and rehabilitation services.

(9) "Rehabilitation training" means all necessary training provided to a disabled individual to compensate for his employment handicap, including but not limited to manual, preconditioning, prevocational, vocational, and supplementary training and training provided for the purpose of achieving broader or more remunerative skills and capacities.

(10) "Vocational rehabilitation" and "vocational rehabilitation services" mean services provided directly or through public or private instrumentalities found by the department of social and rehabilitation services to be necessary to compensate a disabled individual for his employment handicap and to enable him insofar as possible to engage in a remunerative occupation, including but not limited to medical and vocational diagnosis, vocational guidance, counseling, and placement, rehabilitation training, physical restoration, transportation, occupational licenses, customary occupational tools and equipment, maintenance, training books and materials, facilities for groups of handicapped, service to family members, and follow-up service.

History: En. Sec. 1, Ch. 74, L. 1947; amd. Sec. 1, Ch. 218, L. 1959; amd. Sec. 1, Ch. 53, L. 1961; amd. Sec. 1, Ch. 192, L. 1971; Sec. 41-801, R.C.M. 1947; amd. and redes. 71-1801 by Sec. 10, Ch. 121, L. 1974; R.C.M. 1947, 71-2101.

53-7-102. Powers and duties of department. The department of social and rehabilitation services:

(1) shall adopt rules governing personnel standards, the protection of records and confidential information, the manner and form of filing applications, eligibility and investigation and determination thereof for vocational rehabilitation services, procedures for fair hearings, and any other rules necessary to carry out this part;

(2) except as otherwise provided by law, shall provide vocational rehabilitation services to eligible disabled individuals;

(3) shall take any other action it considers necessary or appropriate to carry out the purposes of this part;

(4) may cooperate with other agencies and institutions, both public and private, in providing for vocational rehabilitation of disabled individuals, in studying the problems involved in vocational rehabilitation, and establishing, developing, and providing necessary programs, facilities, and services;

(5) may conduct research and compile statistics relating to the vocational rehabilitation of disabled individuals;

(6) may accept and use gifts to carry out this part. Gifts made under conditions which the department considers proper and consistent with this part may be accepted and shall be held, invested, reinvested, and used in accordance with the conditions of the gift.

History: En. Sec. 3, Ch. 74, L. 1947; amd. Sec. 3, Ch. 53, L. 1961; amd. Sec. 12, Ch. 93, L. 1969; Sec. 41-803, R.C.M. 1947; amd. and redes. 71-1802 by Sec. 11, Ch. 121, L. 1974; R.C.M. 1947, 71-2102.

53-7-103. Department to cooperate with federal government. The department of social and rehabilitation services shall cooperate, pursuant to agreements, with the federal government in carrying out the purposes of any federal statutes pertaining to rehabilitation and may adopt such methods of administration as are found by the federal government to be necessary for the proper and efficient operation of such agreements or plans for rehabilitation and to comply with such conditions as may be necessary to secure the full benefits of such federal statutes.

History: En. Sec. 5, Ch. 74, L. 1947; amd. Sec. 2, Ch. 218, L. 1959; amd. Sec. 5, Ch. 53, L. 1961; Sec. 41-805, R.C.M. 1947; amd. and redes. 71-1803 by Sec. 12, Ch. 121, L. 1974; R.C.M. 1947, 71-2103.

53-7-104. Receipt and disbursement of rehabilitation funds. The state treasurer is the custodian of all funds received from the federal government for the purpose of carrying out any federal statutes pertaining to rehabilitation. The state treasurer shall make disbursements from such funds and from all state funds available for rehabilitation purposes upon certification of the department of social and rehabilitation services.

History: En. Sec. 6, Ch. 74, L. 1947; amd. Sec. 3, Ch. 218, L. 1959; Sec. 41-806, R.C.M. 1947; amd. and redes. 71-1804 by Sec. 13, Ch. 121, L. 1974; R.C.M. 1947, 71-2104.

53-7-105. Eligibility. (1) Vocational rehabilitation services shall be provided to any disabled individual who:

(a) is in the state at the time of filing his application for services and whose vocational rehabilitation the department of social and rehabilitation services determines after full investigation can be satisfactorily achieved; or

(b) is eligible for services under the terms of an agreement with another state or with the federal government.

(2) Except as otherwise provided by law or as specified in any agreement with the federal government with respect to classes of individuals certified to the department, the following rehabilitation services shall be provided at public cost only to disabled individuals found to require financial assistance with respect thereto:

(a) physical restoration;

(b) transportation not provided to determine the eligibility of the individual for vocational rehabilitation services and the nature and extent of the services necessary;

(c) occupational licenses;

(d) customary occupational tools and equipment;

(e) maintenance;

(f) training, including books and materials.

History: En. Sec. 8, Ch. 74, L. 1947; amd. Sec. 3, Ch. 192, L. 1971; Sec. 41-808, R.C.M. 1947; amd. and redes. 71-1805 by Sec. 14, Ch. 121, L. 1974; R.C.M. 1947, 71-2105; amd. Sec. 1, Ch. 55, L. 1981.

Compiler's Comments

1981 Amendment: Inserted ", including" in (2)(f).

1981 Title: The title to Ch. 55, L. 1981 (HB 50), read: "An act to provide vocational training to the disabled and the blind after a financial needs determination has been made; amending sections 53-7-105 and 53-7-306, MCA."

53-7-106. Hearings. An individual applying for or receiving vocational rehabilitation who is aggrieved by any action or inaction of the department of social and rehabilitation services is entitled in accordance with regulations to a fair hearing by the board of social and rehabilitation appeals.

History: En. Sec. 10, Ch. 74, L. 1947; amd. Sec. 4, Ch. 192, L. 1971; Sec. 41-810, R.C.M. 1947; amd. and redes. 71-1806 by Sec. 15, Ch. 121, L. 1974; R.C.M. 1947, 71-2106.

53-7-107. Limitation of political activity. An officer or employee engaged in the administration of the vocational rehabilitation program may not use his official authority or influence or permit the use of the vocational rehabilitation program for the purpose of interfering with an election or affecting the result thereof or for any partisan political purpose. Any such officer or employee may not take any active part in the management of political campaigns or participate in any political activity; however, he may vote as he pleases and express his opinions as a citizen on all subjects. Any such officer or employee may not solicit or receive or be obliged to contribute or render any service, assistance, subscription, assessment, or contribution for any political purpose. An officer or employee violating this provision is subject to discharge or suspension.

History: En. Sec. 12, Ch. 74, L. 1947; Sec. 41-812, R.C.M. 1947; amd. and redes. 71-1807 by Sec. 16, Ch. 121, L. 1974; R.C.M. 1947, 71-2107.

Part 2

Sheltered Workshops

53-7-201. Legislative findings and purpose. (1) The purpose of this part is to encourage the development, improvement, and expansion of sheltered employment and supervised work programs for mentally retarded, severely handicapped, and disadvantaged individuals to enable them to become contributing and self-supporting members of society as an alternative to dependency.

(2) The condition of the mentally retarded, severely handicapped, and disadvantaged is such that after laborious training in the schools and otherwise, they reach the point in their lives where they can and should under proper and continued guidance engage in sheltered employment or supervised work to help them become contributing members of society instead of being dependent. For such persons, retention in sheltered employment or supervised work may constitute satisfactory placement. Such training and placement is often a suitable alternative to institutionalization or idleness and its consequences. By keeping these individuals within their communities and in touch with their families, a worthwhile dimension is added to their lives, and they are thus spared the anxieties naturally attached to separation. All of these factors have also been shown to reflect tangible benefits upon the mentally retarded, severely handicapped, or disadvantaged person by improving his overall well-being.

History: **En. Sec. 1, Ch. 322, L. 1973; R.C.M. 1947, 41-816.**

53-7-202. Definitions. (1) "Department" means the department of social and rehabilitation services.

(2) "Physical or mental disability" means a physical or mental condition which materially limits, contributes to limiting, or if not corrected will probably result in limiting an individual's activities or functioning. The term includes behavioral disorders characterized by deviant social behavior or impaired ability to carry out normal relationships with family and community which may result from vocational, educational, cultural, social, environmental, or other factors.

(3) "Self-care" means a reasonable degree of restoration from dependency upon others for personal needs and care and includes but is not limited to ability to live in own home rather than requiring nursing home care and care for self rather than requiring attendant care.

(4) "Severely handicapped person" means any individual:

(a) who has a physical or mental impairment which requires multiple services over an extended period of time and results from amputation, blindness, cancer, cerebral palsy, cystic fibrosis, deafness, heart disease, hemiplegia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, and other spinal cord conditions, renal failure, and any other disability specified by the department in regulations it shall prescribe; or

(b) who, because of lack of social competence, mobility, experience, skills, training, or other successful characteristics is in need of sheltered employment or work activity services in a protective setting.

(5) "Sheltered workshop" means a charitable organization or institution conducted not for profit but for the purpose of carrying out a recognized program of rehabilitation for handicapped workers or providing such individuals with remunerative employment or other occupational rehabilitating activity of an educational or therapeutic nature.

(6) "Vocational rehabilitation services" means goods or services provided handicapped persons to enable such persons to be fit for gainful occupation

or to attain or maintain a maximum degree of self-support or self-care and includes every type of goods and services for which federal funds are available for vocational rehabilitation purposes, including but not limited to the establishment, construction, development, operation, and maintenance of workshops and rehabilitation facilities.

(7) "Work activity center" means a physically separated department of a workshop having an identifiable program, separate supervision and records, and which is planned and designed exclusively to provide therapeutic activities for handicapped workers whose physical or mental impairment is so severe as to make their productive capacity inconsequential. Therapeutic activities include custodial activities (such as activites where the focus is on teaching the basic skills of living) and any purposeful activity so long as work or production is not the main purpose.

History: En. Sec. 2, Ch. 322, L. 1973; amd. Sec. 1, Ch. 333, L. 1974; amd. Sec. 10, Ch. 37, L. 1977; R.C.M. 1947, 41-817.

53-7-203. Purchase of sheltered employment services. (1) The department may purchase for severely handicapped persons sheltered employment services from any sheltered workshop in Montana or work activity services from any work activity center within Montana. The performance of and payment for such services shall be subject to postaudit review by the state auditor.

(2) The department shall maintain a register of nonprofit organizations which it and other appropriate state and federal agencies have inspected and certified as meeting required standards and as qualifying to serve the needs of such severely handicapped or disadvantaged persons. Eligibility of organizations to receive the funds specified by this part shall be based upon standards and criteria promulgated by the department.

(3) The department is authorized to promulgate such rules as it may deem necessary or proper to carry out the provisions of this section.

History: En. Sec. 3, Ch. 322, L. 1973; amd. Sec. 2, Ch. 333, L. 1974; R.C.M. 1947, 41-818.

53-7-204. Use of federal funds. Federal funds as may be available are appropriated to the department for use in administering the provisions of this part.

History: En. Sec. 4, Ch. 322, L. 1973; R.C.M. 1947, 41-819.

Part 3

Vocational Rehabilitation of the Blind

Part Cross-References

Vending facilities for blind vendors, Title 18, ch. 5, part 4.

53-7-301. Definitions. As used in this part, the following definitions apply:

(1) "Blind individual" means an individual whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees or who has other eye conditions which

render vision equally defective or who has an eye condition which will cause blindness.

(2) "Business license" means any license, permit, or other written authority required by any governmental unit to be obtained in order to engage in a business.

(3) "Department" means the department of social and rehabilitation services provided for in Title 2, chapter 15, part 22.

(4) "Maintenance" means money payments not exceeding the estimated cost of subsistence during the provision of vocational rehabilitation and rehabilitation services.

(5) "Occupational license" means a license, permit, or other written authority required by any governmental unit to be obtained in order to engage in an occupation.

(6) "Physical restoration" means any medical, surgical, or therapeutic treatment necessary to correct or substantially reduce a blind individual's employment handicap within a reasonable length of time, including but not limited to medical, psychiatric, dental, and surgical treatment, nursing services, hospital care, convalescent home care, drugs, medical and surgical supplies, and prosthetic appliances, but excluding curative treatment for acute or transitory conditions.

(7) "Prosthetic appliance" means an artificial device necessary to support or take the place of a part of the body or to increase the acuity of a sense organ.

(8) "Rehabilitation services" means any services, provided directly or through public or private instrumentalities, found by the department to be necessary to compensate a blind individual for his employment handicap or to enable him to achieve the maximum degree of self-care and to engage in productive tasks.

(9) "Rehabilitation training" means all necessary training provided to a blind individual to compensate for his employment handicap, including but not limited to manual, preconditioning prevocational, and supplementary training and training provided for the purpose of achieving broader or more remunerative skills and capacities.

(10) "Vocational rehabilitation" and "vocational rehabilitation services" mean any services, provided directly or through public or private instrumentalities, found by the department to be necessary to compensate a blind individual for his employment handicap and to enable him to engage in a remunerative occupation, including but not limited to medical and vocational diagnosis, vocational guidance, counseling and placement, rehabilitation training, physical restoration, transportation, occupational and business licenses, tools, equipment, initial stocks and supplies, including livestock, capital advances, maintenance, and training books and materials.

History: (1), (2), (4) thru (10)En. Sec. 1, Ch. 167, L. 1955; amd. Sec. 33, Ch. 121, L. 1974; amd. Sec. 37, Ch. 37, L. 1977; Sec. 71-1401, R.C.M.; (3)En. 71-201.1 by Sec. 19, Ch. 121, L. 1974; Sec. 71-201.1, R.C.M. 1947; R.C.M. 1947, 71-201.1(1), 71-1401.

53-7-302. Administration. The department shall provide the services authorized by this part to blind individuals determined by it to be eligible therefor. In carrying out the purposes of this part, the department may, among other things:

(1) cooperate with other departments, agencies, and institutions, both public and private, in providing the services authorized by this part to blind individuals; in studying the problems involved therein; and in establishing, developing, and providing, in conformity with the purposes of this part, such programs, facilities, and services as may be necessary or desirable;

(2) enter into reciprocal agreements with other states to provide the services authorized by this part to residents of the states concerned;

(3) conduct research and compile statistics relating to the provision of services to or the need of services of blind individuals;

(4) provide supplementary services to any applicant or recipient who is in need of treatment either to prevent blindness or to restore his eyesight, whether or not he is blind, if he is otherwise qualified for services or training under this part and if the supplementary services are recommended because of the findings of an opthalmologist or optometric examination. The supplementary services may include necessary travel and other expenses to receive treatment from a hospital or clinic designated by the department.

(5) make rules and take other action necessary or appropriate to carry out this part.

History: En. Sec. 4, Ch. 167, L. 1955; amd. Sec. 34, Ch. 121, L. 1974; amd. Sec. 1, Ch. 237, L. 1974; R.C.M. 1947, 71-1404; amd. Sec. 4, Ch. 199, L. 1979.

Compiler's Comments

Statement of Intent. The statement of intent attached to Ch. 199, L. 1979, provided: "A statement of intent is required for this bill in that it delegates authority to adopt rules in sections 1 through 4.

1. Under present law, SRS has express rulemaking authority to carry out most of its duties under Title 53. The Department's present authority includes the power to adopt rules to implement and carry out the following: child welfare services; Aid to Dependent Children programs; subsidized adoption; protective services for adults; Medical Assistance programs; sheltered workshop programs; community based services; community homes and protective services for the developmentally disabled; and vocational rehabilitation programs.

2. While there are duties for which SRS has express rulemaking authority, there also are duties for which the Department's rulemaking authority could only be implied. The Montana Administrative Procedure Act, Section 2-4-102(11)(a), MCA, requires that substantive rules be adopted under express authority in order to be valid. Under an agreement with the Administrative Code Committee, SRS introduced legislation to eliminate this gap in the Department's express authority. This bill gives SRS express rulemaking authority to adopt rules to comply with federal law; to carry out its responsibilities for public welfare; and to administer vocational rehabilitation for the blind.

3. The express authority given to SRS under this bill will allow the Department to adopt rules which cover the following areas: eligibility requirements for various services; scope of services to be offered; specific criteria that providers of services must meet to qualify as providers; how, when, and in what form various types of assistance will be offered; and procedure for applying for and receiving aid. The area of social services is a field which evolves as the needs of the population change. Federal programs and their concomitant regulations are constantly being revised and altered. This legislation allows SRS to adapt the specifics of its social services programs to meet those federal changes but within the confines of state law."

53-7-303. Cooperation with federal government. The department may cooperate, pursuant to agreements with the federal government, in carrying out the purposes of any federal statutes pertaining to the purposes of this part and comply with such conditions as may be necessary to secure the full benefits of such federal statutes.

History: En. Sec. 5, Ch. 167, L. 1955; R.C.M. 1947, 71-1405.

53-7-304. Receipt and disbursement of federal funds. The state treasurer is hereby designated as the custodian of all funds received from the federal government for the purpose of carrying out any federal statutes pertaining to the purposes of this part. The state treasurer shall make disbursements from such funds and from all state funds available for such purposes upon certification of the department in accordance with the regulations so provided.

History: **En. Sec. 6, Ch. 167, L. 1955; amd. Sec. 49, Ch. 121, L. 1974; R.C.M. 1947, 71-1406.**

53-7-305. Acceptance of gifts. The department shall accept and use gifts made unconditionally by will or otherwise for the purposes of this part. Gifts made under such conditions as in the judgment of the department are proper and consistent with the provisions of this part may be so accepted and shall be held, invested, reinvested, and used in accordance with the conditions of the gift.

History: **En. Sec. 7, Ch. 167, L. 1955; amd. Sec. 35, Ch. 121, L. 1974; R.C.M. 1947, 71-1407.**

53-7-306. Vocational rehabilitation services. (1) Vocational rehabilitation services shall be provided to any blind individual who:

(a) at the time of filing his application for services, resides in the state for other than a temporary purpose and whose vocational rehabilitation the department, after full investigation, determines can be satisfactorily achieved; or

(b) is eligible for services under the terms of an agreement with another state or with the federal government.

(2) Except as otherwise provided by law or as specified in any agreement with the federal government with respect to classes of individuals certified to the department thereunder, the following vocational rehabilitation services shall be provided at public cost only to blind individuals found to require financial assistance with respect thereto:

(a) physical restoration;

(b) transportation not provided to determine the eligibility of the individual for vocational rehabilitation services and the nature and extent of the services necessary;

(c) occupational and business licenses;

(d) tools, equipment, initial stock and supplies (including livestock), and capital advances;

(e) training, including books and materials;

(f) maintenance.

History: **En. Sec. 8, Ch. 167, L. 1955; amd. Sec. 49, Ch. 121, L. 1974; R.C.M. 1947, 71-1408; amd. Sec. 2, Ch. 55, L. 1981.**

Compiler's Comments

1981 Amendment: Inserted ", including" in (2)(e).

1981 Title: The title to Ch. 55, L. 1981 (HB 50), read: "An act to provide vocational training to the disabled and the blind after a financial needs determination has been made; amending sections 53-7-105 and 53-7-306, MCA."

53-7-307. Rehabilitation services. Rehabilitation services shall be provided to any blind individual who:

(1) at the time of filing his application therefor, resides in the state for other than a temporary purpose;

(2) the department, after full investigation, determines can be assisted through the provision of such services to achieve a more useful and purposeful life; or

(3) is eligible therefor under the terms of an agreement with another state or with the federal government.

History: En. Sec. 9, Ch. 167, L. 1955; amd. Sec. 49, Ch. 121, L. 1974; R.C.M. 1947, 71-1409.

53-7-308. Division share of vocational rehabilitation funds. The share of federal funds received by the state for vocational rehabilitation and allocated to the department for the division of visual services shall be established on a line item basis, in the budget of the department, by the legislature. This share may not be reduced by budget amendment between legislative sessions.

History: En. Sec. 2, Ch. 523, L. 1979.

Compiler's Comments

Codification. Sec. 4, Ch. 523, L. 1979, provided: "It is intended that sections 2 and 3 be codified as an integral part of Title 53, chapter 7, part 3, and the provisions of Title 53, chapter 7, part 3, apply to sections 2 and 3."

53-7-309. State plan for visual services. The department shall develop and update, as necessary, a state plan for the provision of services to blind individuals. The department shall provide opportunity for public participation in the development and updating of the plan.

History: En. Sec. 3, Ch. 523, L. 1979.

Compiler's Comments

Codification. Sec. 4, Ch. 523, L. 1979, provided: "It is intended that sections 2 and 3 be codified as an integral part of Title 53, chapter 7, part 3, and the provisions of Title 53, chapter 7, part 3, apply to sections 2 and 3."

Commissioner correction. The provision in section 3, Ch. 523, L. 1979, requiring the department to consult with a visual services advisory council, to be created by the same bill, was not codified because the bill as finally passed did not create an advisory council.

CHAPTER 8

ECONOMIC OPPORTUNITY

Part 1 — Participation in Federal Programs

Section
53-8-101. Purpose and intent.
53-8-102. Agreements with federal agencies authorized.
53-8-103. Expenditure of public funds to carry out agreements.
53-8-104. City-county commission authorized — powers.

Part 1

Participation in Federal Programs

53-8-101. Purpose and intent. It is the purpose of this part to enable the state of Montana and the counties, cities, towns, school districts, and other governmental subdivisions of the state and other organizations or agencies authorized to receive federal assistance under Public Law 88-452, 88th congress, to secure for the citizens of Montana the benefits offered by the United States government to the several states and their citizens in the law of August 20, 1964 (Public Law 88-452 of the 88th congress; 78 Stats. 508) for economic betterment and the relief of poverty. It is the intent of this part to grant to the state and its subdivisions the widest possible authority, within the limits set by law, to cooperate and combine their efforts with those of the appropriate federal agencies and to comply with any federal regulations not in conflict with the laws of the state of Montana to carry out the purposes of the congressional act and secure the resulting benefits for Montana and its people.

History: **En. Sec. 1, Ch. 263, L. 1965; R.C.M. 1947, 71-1601.**

53-8-102. Agreements with federal agencies authorized. The state of Montana and all offices, agencies, departments, and divisions thereof and all counties, cities, towns, school districts, and other governmental subdivisions of the state and other organizations or agencies authorized to receive federal assistance under Public Law 88-452, 88th congress, singly or in combination, are hereby authorized and empowered, within the limits set by the respective laws governing them, to enter into and carry out contracts, agreements, and plans with any authorized agency of the United States government for the implementation and operation within the areas of their respective jurisdictions of the act of congress of August 20, 1964 (Public Law 88-452 of the 88th congress; 78 Stats. 508).

History: **En. Sec. 2, Ch. 263, L. 1965; R.C.M. 1947, 71-1602.**

53-8-103. Expenditure of public funds to carry out agreements. The agencies of the state and local government enumerated in the preceding section may, within the limits of the laws governing their respective authorities to raise and expend public moneys, budget for and/or expend public moneys in order to enter into and carry out contracts, agreements, and plans under this part and Public Law 88-452. Any such expenditures must be made from the budgets, budget items, or appropriations set up for the general purpose to be served by the project.

History: **En. Sec. 3, Ch. 263, L. 1965; R.C.M. 1947, 71-1603.**

53-8-104. City-county commission authorized — powers. The city council or councils of a city or cities within a county and the county commissioners of the county may create a city-county commission to effect the purposes of this part. Such city-county commission is authorized to:

(1) make contracts and agreements with United States government agencies for the purpose of carrying out the intent of this part;

(2) accept and expend public and private funds made available to such commission for the purpose of carrying out the intent of this part.

History: **En. Sec. 4, Ch. 263, L. 1965; R.C.M. 1947, 71-1604.**

CHAPTER 9

SERVICES FOR VICTIMS OF CRIME

Part 1 — The Crime Victims Compensation Act of Montana

Section
53-9-101. Short title.

53-9-102. Legislative purpose and intent.
53-9-103. Definitions.
53-9-104. Powers and duties of division.
53-9-105. Rehabilitation of victims.
53-9-106. Attorneys' fees.
53-9-107. Public inspection and disclosure of division's records.
53-9-108. Limitation of benefit entitlements to proportionate share of available funds.
53-9-109. Crime victims compensation account.
53-9-110. Receipt of federal funds.
53-9-111. Penalty for fraudulently obtaining benefits.
Sections 53-9-112 through 53-9-120 reserved.
53-9-121. Application for compensation.
53-9-122. Informal hearings.
53-9-123. Evidence of condition.
53-9-124. Enforcement of division's orders — improper assertion of privilege.
53-9-125. Limitations on awards.
53-9-126. Tentative award of compensation.
53-9-127. Award of compensation.
53-9-128. Compensation benefits.
53-9-129. Award not subject to execution, attachment, garnishment, or assignment — exception.
53-9-130. Reconsideration and review of division's decisions.
53-9-131. Appeals.
53-9-132. Subrogation.
53-9-133. Effect of award on probation and parole of offender.

Part 1

The Crime Victims Compensation Act of Montana

53-9-101. Short title. This part may be cited as "The Crime Victims Compensation Act of Montana".

History: En. 71-2601 by Sec. 1, Ch. 527, L. 1977; R.C.M. 1947, 71-2601.

53-9-102. Legislative purpose and intent. It is the intent of the legislature of this state to provide a method of compensating and assisting those persons within the state who are innocent victims of criminal acts and who suffer bodily injury or death. To this end, it is the legislature's intention to provide compensation for injuries suffered as a direct result of the criminal acts of other persons.

History: En. 71-2602 by Sec. 2, Ch. 527, L. 1977; R.C.M. 1947, 71-2602.

53-9-103. Definitions. As used in this part, the following definitions apply:

(1) "Claimant" means any of the following claiming compensation under this part:

(a) a victim;

(b) a dependent of a deceased victim; or

(c) an authorized person acting on behalf of any of them.

(2) "Collateral source" means a source of benefits, other than welfare benefits, or advantages for economic loss otherwise compensable under this part which the claimant has received or which is readily available to him from:

(a) the offender;

(b) the government of the United States or any agency thereof, a state or any of its political subdivisions, or an instrumentality of two or more states, unless the law providing for the benefits or advantages makes them excess or secondary to benefits under this part;

(c) social security, medicare, and medicaid;

(d) workers' compensation;

(e) wage continuation programs of any employer;

(f) proceeds of a contract of insurance payable to the claimant for loss which was sustained because of the criminally injurious conduct; or

(g) a contract, including an insurance contract, providing hospital and other health care services or benefits for disability. Any such contract in this state may not provide that benefits under this part shall be a substitute for benefits under the contract or that the contract is a secondary source of benefits and benefits under this part are a primary source.

(3) "Criminally injurious conduct" means conduct that:

(a) occurs or is attempted in this state;

(b) results in bodily injury or death; and

(c) is punishable by fine, imprisonment, or death or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state. Criminally injurious conduct does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle as described in Title 61.

(4) "Dependent" means a natural person who is recognized under the law of this state to be wholly or partially dependent upon the victim for care or support and includes a child of the victim conceived before the victim's death but born after the victim's death, including a child that is conceived as a result of the criminally injurious conduct.

(5) "Division" means the division of workers' compensation provided for in 2-15-1702.

(6) "Victim" means a person who suffers bodily injury or death as a result of:

(a) criminally injurious conduct;

(b) his good faith effort to prevent criminally injurious conduct; or

(c) his good faith effort to apprehend a person reasonably suspected of engaging in criminally injurious conduct.

History: En. 71-2603 by Sec. 3, Ch. 527, L. 1977; R.C.M. 1947, 71-2603; amd. Sec. 1, Ch. 367, L. 1979.

53-9-104. Powers and duties of division. (1) The division shall:

(a) adopt rules to implement this part;

(b) prescribe forms for applications for compensation; and

(c) determine all matters relating to claims for compensation.

(2) The division may:

(a) request and obtain from prosecuting attorneys and law enforcement officers investigations and data to enable the division to determine whether and the extent to which a claimant qualifies for compensation. A statute providing confidentiality for a claimant's juvenile court records does not apply to proceedings under this part.

(b) subpoena witnesses and other prospective evidence, administer oaths or affirmations, conduct hearings, and receive relevant, nonprivileged evidence;

(c) take notice of judicially cognizable facts and general, technical, and scientific facts within its specialized knowledge;

(d) require that law enforcement agencies and officials take reasonable care that victims be informed about the existence of this part and the procedure for applying for compensation under this part; and

(e) require that any person contracting directly or indirectly with an individual formally charged with or convicted of a qualifying crime for any rendition, interview, statement, or article relating to such crime to deposit any proceeds owed to such individual under the terms of the contract into an escrow fund for the benefit of any victims of the qualifying crime or any surviving dependents of the victim, if such individual is convicted of that crime, to be held for such period of time as the division may determine is reasonably necessary to perfect the claims of the victims or dependents. If, after all funds due the victim have been paid to the victim under this section, there remain additional funds in the escrow account, such funds shall be returned to the individual charged or convicted of the crime.

History: En. 71-2605 by Sec. 5, Ch. 527, L. 1977; R.C.M. 1947, 71-2605; amd. Sec. 2, Ch. 367, L. 1979.

53-9-105. Rehabilitation of victims. The division shall refer to the department of social and rehabilitation services victims who have been permanently disabled through criminally injurious conduct, who are receiving benefits under this part, and who in the opinion of the division may be vocationally rehabilitated. The department of social and rehabilitation services shall provide for the vocational rehabilitation of the victims under its rehabilitation programs to the extent funds are available under such programs.

History: En. 71-2616 by Sec. 16, Ch. 527, L. 1977; R.C.M. 1947, 71-2616.

53-9-106. Attorneys' fees. (1) The division may grant attorneys' fees to attorneys for representing claimants before the division. Any attorney's fee granted by the division shall be in addition to compensation awarded the claimant under this part.

(2) The division may regulate the amount of the attorney's fee in any claim under this part when an attorney is representing a claimant.

(3) In cases under this part that go before the workers' compensation judge, the judge may grant, in addition to compensation benefits granted, attorneys' fees to attorneys for representing claimants before the judge.

(4) In no claim or case may attorney fees in excess of 5% of the amount paid to a claimant or on his behalf be paid directly or indirectly to a claimant's attorney.

History: En. 71-2618 by Sec. 18, Ch. 527, L. 1977; R.C.M. 1947, 71-2618.

53-9-107. Public inspection and disclosure of division's records. The records the division maintains in its possession in the administration of this part are open to public inspection and disclosure in accordance with the provisions of 39-71-221 through 39-71-224.

History: En. 71-2619 by Sec. 19, Ch. 527, L. 1977; R.C.M. 1947, 71-2619.

53-9-108. Limitation of benefit entitlements to proportionate share of available funds. Claimants receiving benefits under this part are not granted an absolute entitlement to benefits. Benefits must be paid in accordance with the amount of the legislative appropriation. If the division determines at any time that the appropriated funds for a fiscal year will not be an amount that will fully pay all claims, the division may make appropriate proportionate reductions in benefits to all claimants. Such reductions do not entitle claimants to future retroactive reimbursements in future fiscal years unless the legislature makes appropriations for such retroactive benefits.

History: **En. 71-2620 by Sec. 20, Ch. 527, L. 1977; R.C.M. 1947, 71-2620.**

53-9-109. Crime victims compensation account. There is a crime victims compensation account in the agency fund. There shall be paid into this account 18% of the fines assessed and bails forfeited on all offenses involving a violation of chapter 3, part 1 of chapter 4, or chapters 5 through 10 of Title 61, that are a result of citations or tickets issued by the highway patrol.

History: **En. 71-2624 by Sec. 25, Ch. 527, L. 1977; R.C.M. 1947, 71-2624; amd. Sec. 3, Ch. 367, L. 1979; amd. Sec. 97, Ch. 421, L. 1979; amd. Sec. 1, Ch. 567, L. 1981.**

Compiler's Comments

1981 Amendment: Increased the percent of fines paid into the crime victims compensation account from 6% to 18%; deleted provision that required the payment of 6% of the fines collected for violation of a city ordinance controlling the use of motor vehicles; and added that only fines collected as result of a ticket by the highway patrol are deposited in the compensation account.

53-9-110. Receipt of federal funds. The division may adopt appropriate rules in order to receive federal funds under federal criminal reparation and compensation acts.

History: **En. 71-2622 by Sec. 22, Ch. 527, L. 1977; R.C.M. 1947, 71-2622.**

53-9-111. Penalty for fraudulently obtaining benefits. Any person who knowingly makes a false claim or a false statement or uses any other fraudulent device in connection with any claim is guilty of theft as provided in 45-6-301 and upon conviction shall, in addition to being punished as provided by that section, forfeit and repay any compensation paid under this part.

History: **En. 71-2623 by Sec. 23, Ch. 527, L. 1977; R.C.M. 1947, 71-2623.**

53-9-112 through 53-9-120 reserved.

53-9-121. Application for compensation. An applicant for an award of compensation may apply in writing in a form that conforms substantially to that prescribed by the division.

History: **En. 71-2606 by Sec. 6, Ch. 527, L. 1977; R.C.M. 1947, 71-2606(1).**

53-9-122. Informal hearings. The division may hold informal hearings in order to make determinations regarding the compensability of a claim. At such hearings, the division may subpoena witnesses and documents as set forth in 2-4-104. Hearings held under this section are not considered contested case hearings under the Montana Administrative Procedure Act.

However, the division shall adopt rules regarding its informal hearing procedures.

History: **En. 71-2607 by Sec. 7, Ch. 527, L. 1977; R.C.M. 1947, 71-2607.**

53-9-123. Evidence of condition. (1) The division may require the claimant to supplement the application with any reasonably available medical reports relating to the injury for which compensation is claimed.

(2) If the physical condition of a victim or claimant is material to a claim, the division may order the victim or claimant to submit from time to time to a physical examination by a physician or may order an autopsy of a deceased victim. The division shall pay for such examination or autopsy. The order shall specify the time, place, manner, conditions, and scope of the examination or autopsy and the person by whom it is to be made and shall require the person to file with the division a detailed written report of the examination or autopsy. The report shall set out his findings, including results of all tests made, diagnoses, prognoses, and other conclusions and reports of earlier examinations of the same conditions. On request of the person examined, the division shall furnish him a copy of the report. If the victim is deceased, the division, on request, shall furnish the claimant a copy of the report.

(3) There is no privilege, except privileges arising from the attorney-client relationship, as to communications or records relevant to an issue of the physical condition of the claimant or victim in a proceeding under this part in which that condition is an element.

History: **En. 71-2608 by Sec. 8, Ch. 527, L. 1977; R.C.M. 1947, 71-2608.**

53-9-124. Enforcement of division's orders — improper assertion of privilege. If a person refuses to comply with an order of the division or asserts a privilege to withhold or suppress evidence relevant to a claim, except privileges arising from the attorney-client relationship, the division may make any just order, including denial of the claim.

History: **En. 71-2609 by Sec. 9, Ch. 527, L. 1977; R.C.M. 1947, 71-2609.**

53-9-125. Limitations on awards. (1) Compensation may not be awarded unless the claim is filed with the division within 1 year after the day the criminally injurious conduct occurred causing the injury or death upon which the claim is based. The time for filing a claim may be extended by the division for good cause shown.

(2) Compensation may not be awarded to a claimant who is the offender or an accomplice of the offender or to any claimant if the award would unjustly benefit the offender or accomplice. Unless the division determines that the interests of justice otherwise require in a particular case, compensation may not be awarded to the spouse of or a person living in the same household with the offender or his accomplice or to the parent, child, brother, or sister of the offender or his accomplice.

(3) Compensation may not be awarded unless the criminally injurious conduct resulting in injury or death was reported to a law enforcement officer within 72 hours after its occurrence or the division finds there was good cause for the failure to report within that time.

(4) In order to be entitled to benefits under this part, a claimant must fully cooperate with all law enforcement agencies and prosecuting attorneys

in the apprehension and prosecution of the offender causing the criminally injurious conduct. The division, upon finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies or prosecuting attorneys, may deny or reconsider and reduce an award of compensation.

(5) Compensation otherwise payable to a claimant shall be reduced or denied to the extent the compensation benefits payable are or can be recouped from collateral sources.

(6) Persons serving a sentence of imprisonment or residing in any other public institution which provides for the maintenance of such person are not entitled to the benefits of this part.

(7) Compensation may be denied or reduced if the victim contributed to the infliction of death or injury with respect to which the claim is made. Any reduction in benefits under this subsection shall be in proportion to what the division finds to be the victim's contribution to the infliction of death or injury.

History: En. 71-2606 by Sec. 6, Ch. 527, L. 1977; R.C.M. 1947, 71-2606(2) thru (7); amd. Sec. 4, Ch. 367, L. 1979.

53-9-126. Tentative award of compensation. If the division determines that the claimant will suffer financial hardship unless a tentative award is made and it appears likely that a final award will be made, an amount may be paid to the claimant, to be deducted from the final award or repaid by and recoverable from the claimant to the extent that it exceeds the final award.

History: En. 71-2614 by Sec. 14, Ch. 527, L. 1977; R.C.M. 1947, 71-2614.

53-9-127. Award of compensation. (1) The division shall award compensation benefits under this part if satisfied by a preponderance of the evidence that the requirements for compensation have been met.

(2) An award may be made whether or not any person is prosecuted or convicted. Proof of conviction of a person whose acts give rise to a claim is conclusive evidence that the crime was committed unless an application for rehearing, an appeal of the conviction, or certiorari is pending or a rehearing or new trial has been ordered.

(3) The division may suspend the proceedings pending disposition of a criminal prosecution that has been commenced or is imminent and may make a tentative award under 53-9-126.

History: (1)En. 71-2604 by Sec. 4, Ch. 527, L. 1977; Sec. 71-2604, R.C.M. 1947; (2), (3)En. 71-2610 by Sec. 10, Ch. 527, L. 1977; Sec. 71-2610, R.C.M. 1947; R.C.M. 1947, 71-2604, 71-2610.

53-9-128. Compensation benefits. (1) A claimant is entitled to weekly compensation benefits when the claimant has a total actual loss of wages due to injury as a result of criminally injurious conduct. During the time the claimant seeks such weekly benefits, the claimant, as a result of such injury, must have no reasonable prospect of being regularly employed in the normal labor market. The weekly benefit amount is 66 ⅔% of the wages received at the time of the criminally injurious conduct, subject to a maximum of $125. Weekly compensation payments shall be made at the end of each 2-week period. No weekly compensation payments may be paid for the first week after the criminally injurious conduct occurred, but if total actual loss of wages continues for 1 week, weekly compensation payments shall be paid from the date the wage loss began. Weekly compensation payments shall continue until the claimant has a reasonable prospect of being regularly employed in the normal labor market.

(2) The claimant is entitled to be reimbursed for reasonable services by a physician or surgeon, reasonable hospital services and medicines, and such other treatment as may be approved by the division for the injuries suffered due to criminally injurious conduct.

(3) (a) The dependents of a victim who is killed as a result of criminally injurious conduct are entitled to receive, in a gross single amount payable to all dependents, weekly benefits amounting to 66 ⅔% of the wages received at the time of the criminally injurious conduct causing the death, subject to a maximum of $125 per week. Weekly compensation payments shall be made at the end of each 2-week period.

(b) Benefits under subsection (3)(a) of this section shall be paid to the spouse for the benefit of the spouse and other dependents unless the division determines that other payment arrangements should be made. If a spouse dies or remarries, benefits under subsection (3)(a) shall cease to be paid to the spouse but shall continue to be paid to the other dependents so long as their dependent status continues.

(4) Reasonable funeral and burial expenses of the victim, not exceeding $1,100, shall be paid if all other collateral sources have properly paid such expenses but have not covered all such expenses.

(5) Compensation payable to a victim and all of the victim's dependents in cases of the victim's death, because of injuries suffered due to an act of criminally injurious conduct may not exceed $25,000 in the aggregate.

(6) Compensation benefits are not payable for pain and suffering, inconvenience, physical impairment, or nonbodily damage.

(7) (a) A person who has suffered injury as a result of criminally injurious conduct and as a result of such injury has no reasonable prospect of being regularly employed in the normal labor market, who was employable but was not employed at the time of such injury, may in the discretion of the division be awarded weekly compensation benefits in an amount determined by the division not to exceed $100 per week. Weekly compensation payments shall continue until the claimant has a reasonable prospect of being regularly employed in the normal labor market or for a shorter period as determined by the division. The claimant shall be awarded benefits as provided in subsection (2) of this section.

(b) The dependents of a victim who is killed as a result of criminally injurious conduct and who was employable but not employed at the time of death may in the discretion of the division be awarded, in a gross single amount payable to all dependents, a sum not to exceed $100 per week which shall be payable in the manner and for the period provided by subsection (3)(b) of this section or for such shorter period as determined by the division. The claimant shall be awarded benefits as provided in subsection (4) of this section.

(c) Compensation payable to a victim or a victim's dependents under this subsection may not exceed $20,000, and the limitations of subsection (6) apply to compensation under this subsection (7).

(8) Amounts payable as weekly compensation may not be commuted to a lump sum and may not be paid less frequently than every 2 weeks.

History: (1) thru (7)En. 71-2612 by Sec. 12, Ch. 527, L. 1977; Sec. 71-2612, R.C.M. 1947; (8)En. 71-2613 by Sec. 13, Ch. 527, L. 1977; Sec. 71-2613, R.C.M. 1947; R.C.M. 1947, 71-2612, 71-2613(1).

53-9-129. Award not subject to execution, attachment, garnishment, or assignment — exception. (1) An award is not subject to execution, attachment, garnishment, or other process.

(2) An assignment or agreement to assign a right to compensation in the future is unenforceable except:

(a) an assignment of a right to compensation for work loss to secure payment of maintenance or child support; or

(b) an assignment of a right to compensation to the extent that the benefits are for the cost of products, services, or accommodations necessitated by the injury or death on which the claim is based and are provided or to be provided by the assignee.

History: En. 71-2613 by Sec. 13, Ch. 527, L. 1977; R.C.M. 1947, 71-2613(2), (3).

53-9-130. Reconsideration and review of division's decisions. (1) The division on its own motion or on request of the claimant may reconsider a decision making or denying an award or determining its amount. The division shall reconsider at least annually every award being paid in installments. An order on reconsideration of an award may not require refund of amounts previously paid unless the award was obtained by fraud.

(2) The right of reconsideration does not affect the finality of a division decision for the purpose of appeal.

History: En. 71-2615 by Sec. 15, Ch. 527, L. 1977; R.C.M. 1947, 71-2615.

53-9-131. Appeals. (1) After the division has made final determination concerning any matter relating to a claim, if the claimant disputes the division's determination, he may appeal to the workers' compensation judge for review. The judge, after a hearing, shall make a final determination concerning the dispute and issue an appropriate order affirming or modifying the division's determination.

(2) All proceedings and hearings before the workers' compensation judge shall be in accordance with the appropriate provisions of the Montana Administrative Procedure Act. However, the workers' compensation judge is not bound by common law and statutory rules of evidence.

(3) Notwithstanding Title 2, chapter 4, part 7, an appeal from a final decision of the workers' compensation judge shall be filed directly with the supreme court of Montana in the manner provided by law for appeals from the district court in civil cases.

History: En. 71-2617 by Sec. 17, Ch. 527, L. 1977; R.C.M. 1947, 71-2617.

53-9-132. Subrogation. (1) If a claimant seeks compensation under this part and compensation is awarded, the division is entitled to full subrogation against a judgment or recovery received by the claimant against the offender for all compensation paid under this part. The division's right of subrogation shall be a first lien on the judgment or recovery. If the claimant does not institute the action against the offender within 1 year from the date the criminally injurious conduct occurred, the division may institute the action in the name of the claimant or the claimant's personal representative.

(2) If the claimant institutes the action, the division shall pay a proportional share of costs and attorneys' fees if it recovers under its subrogation interest.

(3) If the division institutes the action in the name of the claimant or the claimant's personal representative and the recovery is in excess of the amount of compensation paid to the claimant and costs incurred by the division in pursuit of the action, the excess shall be paid to the claimant.

(4) If a judgment or recovery includes both damages for bodily injury or death for which the division has paid compensation under this part and damages for which the division has not paid compensation, then the division's subrogation interest shall apply only to that proportion of the judgment or recovery for which it has paid compensation. In a civil action in a court of this state arising out of criminally injurious conduct, the judge, on timely motion, shall direct the jury to return a special verdict indicating separately the amounts of the various items of damages awarded. A claimant may not make recoveries against the offender in such a way as to avoid and preclude the division from receiving its proper subrogation share as provided in this section. The division shall release its lien provided for in subsection (1) above upon receipt of its subrogation share.

History: En. 71-2611 by Sec. 11, Ch. 527, L. 1977; R.C.M. 1947, 71-2611.

53-9-133. Effect of award on probation and parole of offender. (1) When placing any convicted person on probation the court may set as a condition of probation the payment to the state of an amount equal to any benefits paid by the division to a victim or a victim's dependents. The court may set a repayment schedule and modify it as circumstances change.

(2) Payment of the debt may be made a condition of parole subject to modification based on a change in circumstances.

History: En. 71-2621 by Sec. 21, Ch. 527, L. 1977; R.C.M. 1947, 71-2621.

CHAPTER 10

ADMINISTRATION OF HUMAN SERVICES

Part 1 — Plan for Delivery of Human Services

Section
53-10-101. Definitions.
53-10-102. Plan development.
53-10-103. Implementation.

Part 1

Plan for Delivery of Human Services

Part Compiler's Comments

Function of Department of Community Affairs Eliminated: Section 10, Ch. 274, L. 1981, provided: "(1) The functions of the department of community affairs as a member of the human services agency team in 53-10-101 are eliminated.

(2) Unless inconsistent with this act, any reference to the "department of community affairs" and any words dependent on such reference for meaning in those sections in subsection (1) are deleted."

53-10-101. Definitions. As used in this part, the following definitions apply:

(1) "Client" means a person served by or utilizing the services of a human services agency.

(2) "Colocation of agencies" means the placement of staff by two or more autonomous human services agencies in a common facility, where appropriate.

(3) "Human services agencies" means the department of institutions, the department of social and rehabilitation services, and those portions of the department of health and environmental sciences, the department of labor and industry, and the office of the superintendent of public instruction which deal with human services.

(4) "Information and referral system" means a centralized information system that utilizes a single purpose application and referral form to provide for the assessment of client problems, identification of required service, assessment of eligibility, referral of clients to appropriate agencies, and followup of the referrals.

(5) "Multipurpose social worker and team management" means an arrangement in which one staff member, with the possible assistance of a number of staff members representing different services, helps a client to identify all appropriate services and advocates for the client to confirm that the services are provided.

(6) "One-stop service" means a common intake system for two or more services provided to clients.

History: En. Sec. 1, Ch. 520, L. 1979; amd. Sec. 10, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Deleted reference to department of community affairs in (3).

Commissioner Correction: The provisions of sections 1(7), 2(3), 4 and 5 of Ch. 520, L. 1979, referring to functions of an oversight committee were not codified because HB 117 of the 46th Legislature, establishing such a committee, did not pass.

53-10-102. Plan development. (1) The governor shall appoint a committee composed of the governor's human service advisor and knowledgeable professionals practicing in the human services field to develop a plan to demonstrate and evaluate the applicability of the following concepts in certain Montana localities:

(a) one-stop service;

(b) multipurpose caseworkers and team management;

(c) colocation of agencies, where appropriate;

(d) information and referral systems.

(2) The governor's committee shall determine the specific cost relationship between the present system of providing human services compared to the plan demonstrated by this part.

(3) No later than November 30, 1979, the governor's committee shall submit the plan for demonstration and evaluation. This plan may include proposed legislation whenever necessary.

History: En. Sec. 2, Ch. 520, L. 1979.

53-10-103. Implementation. No later than April 30, 1980, the governor's committee shall implement the plan for demonstration and evaluation.

History: En. Sec. 3, Ch. 520, L. 1979.

Compiler's Comments

1981 Appropriations Act — Medicaid Funds — Community Services: Section 19, HB 500 (1981), provided in part: "The department is encouraged to utilize medicaid funds to support community services for the developmentally disabled where the use of such funds is cost-effective in providing services in the least restrictive environment. The department may use any savings generated from the budget for the developmentally disabled to develop additional community services.

The department of social and rehabilitation services shall assure that the community developmental disabilities group homes are reporting all financial transactions through a uniform accounting system including a single chart of accounts and accounting manual.

No money may be disbursed to the homes after July 1, 1982, unless the director of the department of social and rehabilitation services certifies to the legislative finance committee that the group homes are recording and reporting financial information uniformly.

The director shall reorganize the vocational rehabilitation and visual service programs to effect administrative economies and maintain direct benefits to clients within the appropriations herein provided. At least 15% of federal funds available for vocational rehabilitation shall be expended for the blind."

CHAPTERS 11 THROUGH 19

RESERVED

CHAPTER 20

DEVELOPMENTALLY DISABLED

Part 1 — Treatment

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53-20-111. Limitation on who compelled to undertake treatment.
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53-20-114. Appointment of responsible person.
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53-20-116. Professional person to attend hearing.
53-20-117. Social summary of respondent.
53-20-118. Venue for hearing.
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53-20-120. Voluntary request for evaluation and treatment.
53-20-121. Petition for involuntary treatment — contents of.
53-20-122. Presentation of petition to court — dismissal — court-ordered examination.
53-20-123. Outcome of examination — dismissal of petition — court-ordered evaluation and treatment — hearing.
53-20-124. Outcome of evaluation and treatment — recommendation for community-based treatment — hearing.
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Part 3 — Community Homes

53-20-301. Purpose.
53-20-302. Definition of community home — limitation on number of residents.
53-20-303. Parties authorized to establish and operate community homes.
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53-20-401. Definitions.
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53-20-404. Petition to make developmentally disabled person ward of department.
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Part 5 — State-Owned Facilities

53-20-501. Primary function of Boulder River school and hospital and Eastmont training center.
53-20-502. Location of and services provided by Eastmont training center.
53-20-503. Glendive nursing home facility.
53-20-504. Powers and duties of department of institutions and department of social and rehabilitation services.
53-20-505. Disposition of facility.

Part 1

Treatment

53-20-101. Purpose. The purpose of this part is to:

(1) secure for each person who may be developmentally disabled such treatment and habilitation as will be suited to the needs of the person and to assure that such treatment and habilitation are skillfully and humanely administered with full respect for the person's dignity and personal integrity;

(2) accomplish this goal whenever possible in a community-based setting;

(3) accomplish this goal in an institutionalized setting only when less restrictive alternatives are unavailable or inadequate and only when a person is so severely disabled as to require institutionalized care; and

(4) assure that due process of law is accorded any person coming under the provisions of this part.

History: En. 38-1201 by Sec. 1, Ch. 468, L. 1975; R.C.M. 1947, 38-1201.

53-20-102. Definitions. As used in this part, the following definitions apply:

(1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(2) "Community-based facilities" or "community-based services" includes those services and facilities which are available for the evaluation, treatment, and habilitation of the developmentally disabled in a community setting, including but not limited to outpatient facilities, special education services, group homes, foster homes, day-care facilities, sheltered workshops, and other community-based services and facilities.

(3) "Court" means a district court of the state of Montana.

(4) "Developmentally disabled" means suffering from disabilities attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically handicapping condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals, which condition has continued or can be expected to continue indefinitely and constitutes a substantial handicap of such individuals.

(5) "Habilitation" means the process by which a person who is developmentally disabled is assisted to acquire and maintain those life skills which enable him to cope more effectively with the demands of his own person and

environment and to raise the level of his physical, mental, and social efficiency. Habilitation includes but is not limited to formal, structured education and treatment.

(6) "Next of kin" includes but need not be limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(7) "Professional person" means:

(a) a medical doctor; or

(b) a person trained in the field of developmental disabilities and certified by the department of institutions or the department of social and rehabilitation services in accordance with standards of professional licensing boards, federal regulations, and the joint commissions on accreditation of hospitals.

(8) "Resident" means a person admitted to a residential facility for a course of evaluation, treatment, or habilitation.

(9) "Residential facility" or "facility" means any residential hospital or hospital and school which exists for the purpose of evaluating, treating, and habilitating the developmentally disabled on an inpatient basis, including the Boulder River school and hospital and the Eastmont training center. The term does not include a group home, foster home, or halfway house. A correctional facility or a facility for the treatment of the mentally ill shall not be a "residential facility" within the meaning of this part.

(10) "Respondent" means a person alleged in a petition filed pursuant to this part to be developmentally disabled and in need of developmental disability services.

(11) "Responsible person" means any person willing and able to assume responsibility for a person who is developmentally disabled or alleged to be developmentally disabled.

(12) "Seriously developmentally disabled" means developmentally disabled due to developmental or physical disability or a combination of both, rendering a person unable to function in a community-based setting and which has resulted in self-inflicted injury or injury to others or the imminent threat thereof or which has deprived the person afflicted of the ability to protect his life or health.

History: En. 38-1202 by Sec. 2, Ch. 468, L. 1975; amd. Sec. 4, Ch. 37, L. 1977; amd. Sec. 1, Ch. 568, L. 1977; R.C.M. 1947, 38-1202(part).

53-20-103. Residential institution to meet standards. No person shall be admitted to any publicly supported residential institution caring for developmentally disabled persons unless such institution meets the standards prescribed by this part.

History: En. 38-1231 by Sec. 31, Ch. 468, L. 1975; R.C.M. 1947, 38-1231.

53-20-104. Powers and duties of mental disabilities board of visitors. (1) The board shall be an independent board of inquiry and review to assure that the treatment of all persons admitted to a residential facility is humane and decent and meets the requirements set forth in this part.

(2) The board shall review all plans for experimental research or hazardous treatment procedures involving persons admitted to any residential facility to assure that the research project is humane and not unduly hazardous and that it complies with the principles of the statement on the use of

human subjects for research of the American association on mental deficiency and with the principles for research involving human subjects required by the United States department of health, education, and welfare. No experimental research project involving persons admitted to any residential facility affected by this part may be commenced unless it is approved by the mental disabilities board of visitors.

(3) The board shall investigate all cases of alleged mistreatment of a resident.

(4) The board shall at least annually inspect every residential facility which is providing a course of residential habilitation and treatment to any person pursuant to this part. The board shall inspect the physical plant, including residential, recreational, dining, and sanitary facilities. It shall visit all wards and treatment or habilitation areas. The board shall inquire concerning all habilitation programs being implemented by the institution.

(5) The board shall inspect the file of each person admitted to a residential facility pursuant to this part to insure that a habilitation plan exists and is being implemented. The board shall inquire concerning all use of restraints, isolation, or other extraordinary measures.

(6) The board may assist any resident at a residential facility in resolving any grievance he may have concerning his admission or his course of treatment and habilitation in the facility.

(7) If the board believes that any facility is failing to comply with the provisions of this part in regard to its physical facilities or its treatment of any resident, it shall report its findings at once to the professional person in charge of the facility and the director of the department of institutions. If appropriate, after waiting a reasonable time for a response from such professional person, the board may notify the parents or guardian of any resident involved, the next of kin, if known, the responsible person appointed by the court for any resident involved, and the district court which has jurisdiction over the facility.

(8) The board shall report annually to the governor and shall report to each session of the legislature concerning the status of the residential facilities and habilitation programs which it has inspected.

History: En. 38-1232 by Sec. 32, Ch. 468, L. 1975; amd. Sec. 18, Ch. 546, L. 1977; R.C.M. 1947, 38-1232(2) thru (7); amd. Sec. 1, Ch. 485, L. 1979.

53-20-105 through 53-20-110 reserved.

53-20-111. Limitation on who compelled to undertake treatment. No person who has reached the age of majority shall be compelled against his will to undertake a course of treatment and habilitation solely because he is developmentally disabled, but only if such disability causes him to be unable to protect his life and health or to protect the life or safety of others.

History: En. 38-1215 by Sec. 15, Ch. 468, L. 1975; amd. Sec. 4, Ch. 568, L. 1977; R.C.M. 1947, 38-1215.

53-20-112. Procedural rights. (1) Any person subject to emergency admittance to a residential facility, to examination or evaluation by a professional person, or to any hearing held pursuant to this part shall have all the rights accorded to a person subject to involuntary commitment proceedings under the laws of this state relating to involuntary commitment of the seriously mentally ill.

(2) In addition, the parents or guardian of any person alleged to be developmentally disabled and in need of developmental disabilities services have the right to:

(a) be present at any hearing held pursuant to this part;

(b) be represented by counsel in any hearing;

(c) offer evidence and cross-examine witnesses in any hearing; and

(d) have the respondent examined by a professional person of their choice when such professional person is reasonably available, unless the person so chosen is objected to by the respondent or by a responsible person appointed by the court.

History: En. 38-1203 by Sec. 3, Ch. 468, L. 1975; R.C.M. 1947, 38-1203(1), (2); amd. Sec. 12, Ch. 38, L. 1979.

53-20-113. Waiver of rights. (1) A person may waive his procedural rights provided that the waiver is knowingly and intentionally made. The right to counsel in a hearing held pursuant to 53-20-123 may not be waived. The right to habilitation provided for in this part may not be waived.

(2) In the case of a person who has been admitted to a residential facility for up to 30 days of evaluation and treatment or who, pursuant to the recommendation of a professional person, may be admitted to a residential facility for an extended course of habilitation, a waiver of rights can be knowingly and intentionally made only with the concurrence of the person's counsel, if any, his parents or guardian, and the responsible person appointed by the court, if any.

(3) (a) In the case of a minor, the waiver of rights can be knowingly and intentionally made:

(i) when the minor is under the age of 12, by the parents of the minor with the concurrence of the responsible person, if any;

(ii) when the minor is over the age of 12, by the minor and his parents;

(iii) when the minor is over the age of 12 and the minor and his parents do not agree, the minor can make an effective waiver of his rights only with the advice of counsel.

(b) If the court believes that there may be a conflict of interest between a minor and his parents or guardian, the court may appoint a responsible person or guardian ad litem for the minor.

History: En. 38-1203 by Sec. 3, Ch. 468, L. 1975; R.C.M. 1947, 38-1203(3) thru (5).

53-20-114. Appointment of responsible person. Whenever, in any proceeding under this part, the court believes that a conflict of interest may exist between a person who is developmentally disabled or alleged to be developmentally disabled and his parents or guardian or that the parents or guardian are unable to protect the interests of such person or whenever there is no parent or guardian, the court shall appoint a responsible person to protect the interests of the person who is developmentally disabled or alleged to be developmentally disabled. The responsible person may not be an employee of a residential facility. Only one person shall at any one time be the responsible person within the meaning of this part. In appointing a responsible person, the court shall consider the preference of the respondent or patient.

The court may at any time, for good cause shown, change its designation of who is the responsible person. The appointment of the responsible person must terminate at the time of the resident's discharge from the residential facility. However, the appointment of the responsible person shall not terminate during any period of conditional release from the facility.

History: En. 38-1202 by Sec. 2, Ch. 468, L. 1975; amd. Sec. 4, Ch. 37, L. 1977; amd. Sec. 1, Ch. 568, L. 1977; R.C.M. 1947, 38-1202(part); amd. Sec. 2, Ch. 485, L. 1979.

53-20-115. Choice of professional person. Whenever evaluation by a professional person is ordered by a court pursuant to any provision of this part, the person being evaluated, his parents, or guardian shall have a reasonable choice of a professional person qualified to perform such service.

History: En. 38-1212 by Sec. 12, Ch. 468, L. 1975; R.C.M. 1947, 38-1212.

53-20-116. Professional person to attend hearing. In any hearing held pursuant to this part which involves consideration of the recommendation and report of a professional person, the professional person who made the recommendation and report shall be present at the hearing and subject to cross-examination.

History: En. 38-1213 by Sec. 13, Ch. 468, L. 1975; R.C.M. 1947, 38-1213.

53-20-117. Social summary of respondent. In any hearing held pursuant to this part, the court may request the county welfare department to prepare a social summary of the respondent for use by the court.

History: En. 38-1214 by Sec. 14, Ch. 468, L. 1975; R.C.M. 1947, 38-1214.

53-20-118. Venue for hearing. Hearings held pursuant to this part shall be held in the district court for the district where the respondent resides, except that at the request of any party or the professional person, who must be present at the hearing, a hearing may be held in the district court for the district where the respondent is undergoing evaluation, treatment, or habilitation in a residential facility or is undergoing community-based evaluation, treatment, or habilitation. The cost of any hearing held pursuant to this part shall be borne by the county where the respondent resides.

History: En. 38-1210 by Sec. 10, Ch. 468, L. 1975; R.C.M. 1947, 38-1210.

53-20-119. Appeal procedure. Any order issued by a court after a hearing held pursuant to any provision of this part may be appealed to the Montana supreme court in the same manner as for civil appeals generally.

History: En. 38-1211 by Sec. 11, Ch. 468, L. 1975; R.C.M. 1947, 38-1211.

53-20-120. Voluntary request for evaluation and treatment. (1) The parents or guardian of any person alleged to be developmentally disabled or the person himself may at any time request the assistance of a professional person in determining whether the person is developmentally disabled, the extent of such disability, and the most appropriate course of treatment, habilitation, and education for the person alleged to be developmentally disabled.

(2) Whenever the parents or guardian of a person alleged to be developmentally disabled or the person himself requests a course of evaluation and

treatment, he shall ascertain, with the professional person who undertakes the case, the least restrictive means of evaluating and treating the person alleged to be developmentally disabled. Evaluation and treatment in a residential facility shall take place only upon certification by the professional person in charge of the case that adequate community-based facilities are not available reasonably near the place of residence of the person alleged to be developmentally disabled. Residential evaluation and treatment shall not be for more than 30 days without subsequent proceedings before the court.

History: En. 38-1204 by Sec. 4, Ch. 468, L. 1975; R.C.M. 1947, 38-1204.

53-20-121. Petition for involuntary treatment — contents of. (1) Any person who believes that there is a person who is developmentally disabled and in need of developmental disability services may report the situation to a professional person. If the professional person believes from the facts given to him that the person may be developmentally disabled and in need of developmental disability services, he shall contact the parents or guardian of the person alleged to be developmentally disabled or the person himself. If any of the persons so contacted refuse to cooperate with the professional person and if the professional person believes from all the circumstances of the case that the person may be developmentally disabled and in need of developmental disability services, he shall request the county attorney to file a petition alleging that there is a person in the county who is developmentally disabled and in need of developmental disability services.

(2) The petition shall contain:

(a) the name and address of the professional person and any other person requesting the petition and their interest in the case;

(b) the name and address of the respondent;

(c) the name and address of the parents or guardian of the respondent and of any other person believed to be legally responsible for the care, support, and maintenance of the respondent;

(d) the name and address of the respondent's next of kin, to the extent known;

(e) the name and address of any person who the county attorney believes might be willing and able to be appointed responsible person; and

(f) a statement of the rights of the respondent and his parents or guardian which shall be in conspicuous print and identified by a suitable heading.

History: En. 38-1205 by Sec. 5, Ch. 468, L. 1975; amd. Sec. 5, Ch. 37, L. 1977; R.C.M. 1947, 38-1205(1), (2).

53-20-122. Presentation of petition to court — dismissal — court-ordered examination. (1) Upon presentation to the court by the county attorney, the court shall immediately consider the petition, with or without a hearing, to determine if there is probable cause to believe that the respondent is developmentally disabled and in need of evaluation and treatment.

(2) If the court finds no such probable cause, it shall dismiss the petition.

(3) If the court finds that probable cause does exist, it shall direct a professional person to examine the respondent and to make an inquiry concerning the circumstances of the case. Such examination shall not exceed 4 hours

in length. When the professional person first contacts the respondent, before he begins any examination, he shall give the respondent a copy of the petition and explain to the respondent the nature of the proceeding and his rights as set forth in the petition. If the respondent is incapable of understanding the explanation and proceeding, the professional person shall give the petition and make the explanation to the parents or guardian of the respondent. Before making any inquiry of the parents or guardian of the respondent, the professional person shall give them a copy of the petition and explain the nature of the proceeding and their rights as set forth in the petition.

(4) If probable cause is found, the court may appoint a responsible person other than the respondent's parents or guardian to protect the interests of the respondent. The responsible person shall be notified as soon as possible that a petition has been filed.

(5) Notice of the petition and the finding of probable cause shall be mailed or delivered to the respondent and to all other persons named in the petition and to any person who would have been named in the petition had his name, address, and relationship to the respondent been known at the time.

History: En. 38-1205 by Sec. 5, Ch. 468, L. 1975; amd. Sec. 5, Ch. 37, L. 1977; R.C.M. 1947, 38-1205(3), (4).

53-20-123. Outcome of examination — dismissal of petition — court-ordered evaluation and treatment — hearing. (1) If the professional person, based on his examination and inquiry, determines that the respondent is not developmentally disabled or is not in need of developmental disability services, he shall report this finding in writing to the court and the petition shall be dismissed. If the professional person concludes that the respondent is developmentally disabled and in need of developmental disability services, he shall report this conclusion to the court in writing, together with his recommendations for evaluation and treatment. The report shall include an explanation of the basis on which the professional person has reached his conclusion, a description of any tests or evaluation devices he has employed, and an opinion of whether institutional or community services are required. The recommendation as to placement shall be based on consultation with the department of institutions and the department of social and rehabilitation services. The two departments shall develop written policies to implement this requirement.

(2) (a) If the professional person's recommendation is for further evaluation and treatment, notice of this recommendation shall be sent to the respondent, his parents or guardian, the next of kin, the responsible person appointed by the court, if any, and any attorney representing the respondent or his parents or guardian. If no responsible person has yet been appointed, the court may appoint one at this time.

(b) If the respondent, his parents or guardian, the responsible person, if any, or counsel for any party requests a hearing on the recommendation, the court shall set a time and place for hearing. The hearing shall be before the court without a jury. The rules of civil procedure shall apply.

(3) Prior to any hearing held pursuant to this section, the court shall appoint counsel to represent the respondent if the respondent has not

retained independent counsel. The parents (or guardian) shall be informed of their right to counsel, and if they are indigent, the court shall on their request appoint counsel for them. In no case may the same attorney represent the respondent and his parents or guardian.

(4) If the hearing is waived or if the court finds, after hearing, that the respondent is developmentally disabled and in need of further evaluation and treatment, the court shall order that the respondent undergo such evaluation and treatment. Evaluation and treatment ordered pursuant to this subsection may not be for more than 30 days. It shall take place in the least restrictive environment in which the necessary evaluation and treatment can be accomplished. Evaluation and treatment in a residential facility may be ordered only if the necessary evaluation and treatment cannot be accomplished through the use of community-based facilities.

History: En. 38-1206 by Sec. 6, Ch. 468, L. 1975; amd. Sec. 6, Ch. 37, L. 1977; R.C.M. 1947, 38-1206; amd. Sec. 3, Ch. 485, L. 1979.

53-20-124. Outcome of evaluation and treatment — recommendation for community-based treatment — hearing. (1) If, as a result of the evaluation and treatment ordered by the court, the professional person in charge of the case recommends a course of habilitation and treatment at the community level making use of community- and regional-based services for the developmentally disabled, he shall report his recommendation in writing to the court. The recommendation shall be accompanied by a written report indicating the factual basis for the recommendation and describing any tests or evaluation devices which the professional person has employed in evaluating the respondent. If this course of treatment and habilitation is agreed to by the parents, guardian, person evaluated, responsible person, if any, and counsel for the person evaluated, if any, then this community-based course of treatment shall be commenced as soon as practicable and the petition shall be dismissed.

(2) If any of the parties listed in the preceding subsection object to the community-based course of treatment, they may request the court to conduct a hearing on the matter. If a responsible person has not yet been appointed, the court may appoint a responsible person prior to the hearing. Notice of the time, date, and place of the hearing shall be mailed or delivered to all of the parties listed in the preceding subsection and to the attorney for the parents or guardian, if any. The hearing shall be held before the court without a jury. The rules of civil procedure shall apply. If the court finds that the respondent is developmentally disabled and in need of community-based developmental disabilities services, it shall order that the respondent undertake a community-based course of treatment and habilitation.

History: En. 38-1207 by Sec. 7, Ch. 468, L. 1975; R.C.M. 1947, 38-1207.

53-20-125. Outcome of evaluation and treatment — recommendation for treatment at residential facility — hearing. (1) If as a result of the evaluation and treatment, either agreed to by the parents, guardian, or the person himself pursuant to 53-20-120 or ordered by the court, the professional person in charge of the case concludes that the person evaluated is seriously developmentally disabled and recommends that treatment and habilitation be had in a residential facility on an extended basis, the professional person shall file his written recommendation and report with the court and request that the court order the admission. The report shall include the factual basis for the recommendation and shall describe any tests or evaluation devices which have been employed in evaluating the patient. If no responsible person has yet been appointed, the court may appoint one at this time. If there is no parent or guardian, the court shall appoint a responsible person. At the request of the respondent, his parents or guardian, or the responsible person, the court shall appoint counsel for the respondent. If the parents (or guardian) are indigent and if they request it, the court shall appoint counsel for the parents or guardian. Notice of the recommendation shall be mailed or delivered to the respondent, his parents or guardian, the responsible person, next of kin, if known, and the attorney for the respondent, if any, and for the parents or guardian, if any.

(2) The respondent, his parents or guardian, the responsible person, or the attorney for any party may request that a hearing be had on the recommendation. If a hearing is requested, the court shall mail or deliver notice of the date, time, and place of the hearing to each of the parties listed at the beginning of this subsection. The hearing shall be to the court without jury. The rules of civil procedure shall apply.

(3) If the court finds that the respondent is seriously developmentally disabled and that available community-based services are not adequate to protect the life and physical safety of the person and others or to provide appropriate treatment and habilitation, it shall order the respondent admitted to a residential facility for an extended course of treatment and habilitation. If the court finds that the respondent is developmentally disabled, in need of developmental disability services, and that available community-based services are adequate to protect the life and physical safety of the person and others and to provide appropriate treatment and habilitation, it shall order the respondent to undertake a community-based course of treatment and habilitation. If the court finds that the respondent is not developmentally disabled or is not in need of developmental disability services, it shall dismiss the request.

(4) If none of the parties notified of the recommendation request a hearing, the court may issue an order authorizing the person to be admitted to the residential facility for an extended period of treatment and habilitation or the court may initiate its own inquiry as to whether the order should be granted. The court may refuse to authorize admission of a person to a residential facility for an extended period of treatment and habilitation if such admission is not in the best interests of the person.

History: En. 38-1208 by Sec. 8, Ch. 468, L. 1975; amd. Sec. 7, Ch. 37, L. 1977; amd. Sec. 2, Ch. 568, L. 1977; R.C.M. 1947, 38-1208(1) thru (4).

53-20-126. Maximum period of admission to residential facility. (1) No person shall be admitted to a residential facility for longer than 30 days except on approval of the court. Whenever a person is admitted to a residential facility for longer than 30 days, the court may appoint a person other than the parents or guardian to act as responsible person for the resident. If there is no parent or guardian, the court shall appoint a responsible person.

(2) The court order approving the admission shall specify the maximum period of time for which the person is admitted to the residential facility. In no case shall this maximum period exceed 1 year.

History: En. 38-1209 by Sec. 9, Ch. 468, L. 1975; amd. Sec. 3, Ch. 568, L. 1977; R.C.M. 1947, 38-1209(1), (2).

53-20-127. Transfer to another residential facility — release to community-based alternative — hearing. (1) If, at any time during the period for which a person is admitted to a residential facility for an extended period of habilitation and treatment, the professional person in charge of the resident decides that there exist sufficient community-based alternatives to provide adequate treatment and habilitation for the resident and adequate protection of the life and physical safety of the resident and others or that it is in the best interests of the resident that he be transferred to another residential facility, then he may release the resident to such community-based alternative or transfer the resident to the other residential facility no less than 15 days after sending notice of the proposed release or transfer to the resident, his parents or guardian, the attorney who most recently represented the resident, if any, the responsible person appointed by the court, if any, and the court which ordered the admission. If the resident has been found unfit to proceed to trial, notice shall be sent to the court which found the resident unfit to proceed to trial and to the county attorney and the attorney who represented the resident at the time the resident was found unfit to proceed to trial. If any of the parties so notified objects to the release or transfer, they may petition the court for a hearing to determine whether the release or transfer should be allowed. The hearing shall comply with the procedures set forth in 53-20-125. The court may on its own initiative inquire concerning the propriety of the release or transfer. Nothing in this subsection shall prevent the transfer of a resident to a hospital or other medical facility for necessary medical treatment or emergency transfer of a resident to a mental health facility provided such emergency transfer complies with the statutory requirements for emergency detention of the mentally ill. Within 24 hours of an emergency medical or psychiatric transfer, notice shall be given to the parents or guardian of the resident, the responsible person appointed by the court, if any, and the court.

(2) If any person is admitted to a residential facility for an extended course of habilitation without a hearing and if subsequent to such admission one of the parties who could have requested a hearing learns that an alternative course of treatment is available which is more suitable to the needs of the resident, the party may request the professional person in charge of the resident to release the resident to the alternative if it is a community-based alternative or transfer the resident to the alternative if it is a residential alternative. Any such transfer or release shall comply with the requirements of subsection (1) of this section. If the professional person in charge of the resident refuses to authorize the release or transfer, then the party may petition the court for a hearing to determine whether the present residential alternative should be continued. The hearing shall comply with the procedures set forth in 53-20-125.

History: (1)En. 38-1209 by Sec. 9, Ch. 468, L. 1975; amd. Sec. 3, Ch. 568, L. 1977; Sec. 38-1209, R.C.M. 1947; (2)En. 38-1208 by Sec. 8, Ch. 468, L. 1975; amd. Sec. 7, Ch. 37, L. 1977; amd. Sec. 2, Ch. 568, L. 1977; Sec. 38-1208, R.C.M. 1947; R.C.M. 1947, 38-1208(5), 38-1209(3).

53-20-128. Extension of admission period — hearing. (1) If the professional person in charge of the resident determines that the admission to the residential facility should continue beyond the period specified in the court order, he shall, at least 15 days before the end of the period set out in the court order, send written notice of his recommendation and request for renewal of the order to the court which issued the order, the resident, his parents or guardian, the next of kin, if known, the attorney who most recently represented the resident, if any, and the responsible person appointed by the court, if any. The recommendation and request shall be accompanied by a written report which shall describe the habilitation plan which has been undertaken for the resident and the future habilitation plan which is anticipated by the professional person.

(2) If any person so notified requests a hearing, the court shall set a time and place for the hearing and shall mail or deliver notice to all of the persons informed of the recommendation. The hearing shall be conducted in the manner set out in 53-20-125. If the court finds that the residential admission is still justified, it may order continuation of the admission to that residential facility or transfer of the resident to a different residential facility. If the court finds that the resident is still in need of developmental disabilities services but does not require residential treatment, it shall order an appropriate course of community-based habilitation or, if all parties are willing for the resident to participate in a community-based program of habilitation, it shall dismiss the petition. If the need for developmental disabilities services no longer exists, the court shall dismiss the petition. The court shall not order continuation of admission to a residential facility which does not have an individualized habilitation plan for the resident. In its order, the court shall make findings of fact on which its order is based. The court may on its own initiative inquire concerning the suitability of continuing an admission to a residential facility.

History: **En. 38-1209 by Sec. 9, Ch. 468, L. 1975; amd. Sec. 3, Ch. 568, L. 1977; R.C.M. 1947, 38-1209(4), (5).**

53-20-129. Emergency admission. The parents, guardian, the person himself, or a professional person may admit a person believed to be developmentally disabled to a residential facility on an emergency basis when necessary to protect the person or others from death or serious bodily harm. If requested by the parents, guardian, or the person admitted on an emergency basis, a petition as set out in 53-20-121 and 53-20-122 shall be filed on the next judicial day by the county attorney of the county where the person resides. If a petition is filed, the professional person assigned by the court to conduct the examination and inquiry shall report back to the court on the next judicial day following the filing of the petition. Once a petition is filed, continued detention in the residential facility shall be allowed only on order of the court when necessary to protect the respondent or others from death or serious bodily harm. In no case shall an emergency admission to a residential facility continue for longer than 30 days without subsequent proceedings before the court.

History: **En. 38-1216 by Sec. 16, Ch. 468, L. 1975; amd. Sec. 5, Ch. 568, L. 1977; R.C.M. 1947, 38-1216.**

53-20-130. Patient transfers from mental health facilities. If any person is a patient in a mental health facility and the professional person in charge of the patient determines that the patient is suffering from a developmental disability rather than mental illness and should more properly be admitted to a residential facility or an appropriate less restrictive alternative, then the professional person shall commence proceedings to effect such admission, consistent with the procedures set forth in this part for admissions generally.

History: En. 38-1233 by Sec. 33, Ch. 468, L. 1975; R.C.M. 1947, 38-1233; amd. Sec. 4, Ch. 485, L. 1979.

53-20-131. Placement in nonstate facility. (1) If a person is admitted to a residential facility under the provisions of this part and is eligible for hospital care, treatment, or habilitation by an agency of the United States and if a certificate of notification from such agency showing that facilities are available and that the person is eligible for care or treatment therein is received, the court may order the person to be placed in the custody of the agency for hospitalization. The chief officer of any hospital or residential facility operated by the agency and in which the person is admitted shall, with respect to the person, be vested with the same powers as the superintendent of the Boulder River school and hospital with respect to detention, custody, transfer, and release of the person. Jurisdiction shall be retained in the appropriate courts of this state to inquire into the mental condition of persons so admitted and to determine the necessity for continuance of their admission.

(2) Consistent with other provisions of this part, a person admitted to a residential facility under this part for a period more than 30 days may be committed by the court to the custody of friends or next of kin residing outside the state or transferred to a residential facility located outside the state if the out-of-state facility agrees to receive the person. No such commitment or transfer shall be for a longer period of time than is permitted within the state. If the person is indigent, the expense of supporting him in an out-of-state facility and the expense of transportation shall be borne by the state of Montana.

(3) The transfer of persons admitted to a residential facility out of Montana under the provisions of this part or into Montana under the laws of another jurisdiction shall be governed by the provisions of the Interstate Compact on Mental Health.

History: En. 38-1218 by Sec. 18, Ch. 468, L. 1975; R.C.M. 1947, 38-1218.

53-20-132 through 53-20-140 reserved.

53-20-141. Denial of legal rights. (1) Unless specifically stated in an order by the court, a person admitted to a residential facility for an extended course of habilitation shall not forfeit any legal right or suffer any legal disability by reason of the provisions of this part, except insofar as it may be necessary to detain the person for habilitation, evaluation, or care.

(2) Whenever any person is admitted to a residential facility for a period of more than 30 days for an extended course of habilitation, the court ordering the admission may make an order stating specifically any legal rights

which are denied the respondent and any legal disabilities which are imposed on him. As part of its order, the court may appoint a person to act as conservator of the respondent's property. Any conservatorship created pursuant to this section shall terminate upon the conclusion of the admission if not sooner terminated by the court. A conservatorship or guardianship extending beyond the period of the admission may not be created except according to the procedures set forth under Montana law for the appointment of conservators and guardians generally.

(3) Any person who has been admitted to a residential facility pursuant to this part shall, upon the termination of the admission, be automatically restored to all of his civil and legal rights which may have been lost when he was admitted. However, this subsection shall not affect any guardianship or conservatorship created independently of the admission proceedings according to the provisions of Montana law relating to the appointment of conservators and guardians generally. Any person who leaves a residential facility following a period of evaluation and habilitation shall be given a written statement setting forth the substance of this subsection.

(4) Any person admitted to a residential facility prior to July 1, 1975, shall enjoy all the rights and privileges of a person admitted after July 1, 1975.

History: En. 38-1217 by Sec. 17, Ch. 468, L. 1975; R.C.M. 1947, 38-1217.

53-20-142. Rights while in a residential facility. Persons admitted to a residential facility for a period of habilitation shall enjoy the following rights:

(1) Residents shall have a right to dignity, privacy, and humane care.

(2) Residents shall be entitled to send and receive sealed mail. Moreover, it shall be the duty of the facility to foster the exercise of this right by furnishing the necessary materials and assistance.

(3) Residents shall have the same rights and access to private telephone communication as patients at any public hospital except to the extent that a professional person responsible for formulation of a particular resident's habilitation plan writes an order imposing special restrictions and explains the reasons for any such restrictions. The written order must be renewed monthly if any restrictions are to be continued.

(4) Residents shall have an unrestricted right to visitation except to the extent that a professional person responsible for formulation of a particular resident's habilitation plan writes an order imposing special restrictions and explains the reasons for any such restrictions. The written order must be renewed monthly if any restrictions are to be continued.

(5) Residents shall have a right to receive suitable educational and habilitation services regardless of chronological age, degree of retardation, or accompanying disabilities or handicaps.

(6) Each resident shall have an adequate allowance of neat, clean, suitably fitting, and seasonable clothing. Except when a particular kind of clothing is required because of a particular condition, residents shall have the opportunity to select from various types of neat, clean, and seasonable clothing. Such clothing shall be considered the resident's throughout his stay in the institution. Clothing, both in amount and type, shall make it possible for residents to go out of doors in inclement weather, to go for trips or visits

appropriately dressed, and to make a normal appearance in the community. The facility shall make provision for the adequate and regular laundering of the residents' clothing.

(7) Each resident shall have the right to keep and use his own personal possessions except insofar as such clothes or personal possessions may be determined by a professional person to be dangerous either to himself or to others.

(8) A resident has a right to a humane physical environment within the residential facilities. These facilities shall be designed to make a positive contribution to the efficient attainment of the habilitation goals of the resident. To accomplish this purpose:

(a) regular housekeeping and maintenance procedures which will ensure that the facility is maintained in a safe, clean, and attractive condition shall be developed and implemented;

(b) pursuant to an established routine maintenance and repair program, the physical plant shall be kept in a continuous state of good repair and operation so as to ensure the health, comfort, safety, and well-being of the residents and so as not to impede in any manner the habilitation programs of the residents;

(c) the physical facilities must meet all fire and safety standards established by the state and locality. In addition, the facility shall meet such provisions of the life safety code of the national fire protection association as are applicable to it.

(d) there must be special facilities for nonambulatory residents to assure their safety and comfort, including special fittings on toilets and wheelchairs. Appropriate provision shall be made to permit nonambulatory residents to communicate their needs to staff.

(9) Residents shall have a right to receive prompt and adequate medical treatment for any physical or mental ailments or injuries or physical disabilities and for the prevention of any illness or disability. Such medical treatment shall meet standards of medical practice in the community. However, nothing in this subsection may be interpreted to impair other rights of any resident in regard to involuntary commitment for mental illness, use of psychotropic medication, use of hazardous, aversive, or experimental procedures, or the refusal of such treatment.

(10) Corporal punishment shall not be permitted.

(11) The opportunity for religious worship shall be accorded to each resident who desires such worship. Provisions for religious worship shall be made available to all residents on a nondiscriminatory basis. No individual shall be compelled to engage in any religious activities.

(12) Residents shall have a right to a nourishing, well-balanced diet. The diet for residents shall provide at a minimum the recommended daily dietary allowance as developed by the national academy of sciences. Provisions shall be made for special therapeutic diets and for substitutes at the request of the resident, his parents, guardian, or next of kin, or the responsible person appointed by the court in accordance with the religious requirements of any resident's faith. Denial of a nutritionally adequate diet shall not be used as punishment.

(13) Residents shall have a right to regular physical exercise several times a week. It shall be the duty of the facility to provide both indoor and outdoor facilities and equipment for such exercise. Residents shall have a right to be outdoors daily in the absence of contrary medical considerations.

(14) Residents shall have a right, under appropriate supervision, to suitable opportunities for the interaction with members of the opposite sex except where a professional person responsible for the formulation of a particular resident's habilitation plan writes an order to the contrary and explains the reasons therefor. The order must be renewed monthly if the restriction is to be continued.

History: En. 38-1221 by Sec. 21, Ch. 468, L. 1975; R.C.M. 1947, 38-1221; amd. Sec. 5, Ch. 485, L. 1979.

53-20-143. Right not to be fingerprinted. No person admitted to or in a residential facility shall be fingerprinted unless required by other provisions of law.

History: En. 38-1219 by Sec. 19, Ch. 468, L. 1975; R.C.M. 1947, 38-1219.

53-20-144. Rights concerning photographs. (1) A person admitted to a residential facility may be photographed upon admission for identification, medical, habilitative, and administrative purposes of the facility. Such photographs shall be confidential and shall not be released by the facility except pursuant to court order.

(2) No other nonmedical or nonhabilitative photographs shall be taken or used without consent of the resident's parents or guardian or the responsible person appointed by the court.

History: En. 38-1220 by Sec. 20, Ch. 468, L. 1975; R.C.M. 1947, 38-1220; amd. Sec. 6, Ch. 485, L. 1979.

53-20-145. Right to be free from unnecessary or excessive medication. Residents have a right to be free from unnecessary or excessive medication. No medication shall be administered unless at the written order of a physician. The professional person in charge of the facility and the attending physician shall be responsible for all medication given or administered to a resident. The use of medication shall not exceed standards of use that are advocated by the United States food and drug administration. Notation of each individual's medication shall be kept in his medical records. A pharmacist or a registered nurse shall review monthly the record of each resident on medication for potential adverse reactions, allergies, interactions, contraindications, rationality, and laboratory test modifications and shall advise the physician of any problems. Medications shall be reviewed quarterly by the attending or staff physician. At least monthly an attending physician shall review the drug regimen of each patient on psychotropic medication. All prescriptions shall be written with a termination date that may not exceed 90 days. Medication for newly admitted residents shall be reviewed and reordered as necessary upon admission and then every 30 days for the first 90 days. Medications shall not be used as punishment, for the convenience of staff, as a substitute for program, or in quantities that interfere with the resident's treatment program. Nothing in this section may be interpreted to relieve any physician or other professional or medical staff person from any obligation to adequately monitor the medication of any resident, with due consideration to the nature of the medication, the purpose for which it is given, and the condition of the resident.

History: En. 38-1226 by Sec. 26, Ch. 468, L. 1975; R.C.M. 1947, 38-1226; amd. Sec. 7, Ch. 485, L. 1979.

53-20-146. Right not to be subjected to certain treatment procedures. (1) Residents of a residential facility shall have a right not to be subjected to any unusual or hazardous treatment procedures without the express and informed consent of the resident, if the resident is able to give such consent, and of his parents or guardian or the responsible person appointed by the court after opportunities for consultation with independent specialists and legal counsel. Such proposed procedures shall first have been reviewed and approved by the mental disabilities board of visitors before such consent shall be sought.

(2) Physical restraint shall be employed only when absolutely necessary to protect the resident from injury to himself or to prevent injury to others. Mechanical supports used to achieve proper body position and balance which are ordered by a physician are not considered a physical restraint. Restraint shall not be employed as punishment, for the convenience of staff, or as a substitute for a habilitation program. Restraint shall be applied only if alternative techniques have failed and only if such restraint imposes the least possible restriction consistent with its purpose. Only a professional person may authorize the use of restraints. Orders for restraints by a professional person shall be in writing and shall not be in force for longer than 12 hours. Whenever physical restraint is ordered, suitable provision shall be made for the comfort and physical needs of the person restrained.

(3) Seclusion, defined as the placement of a resident alone in a locked room for nontherapeutic purposes, shall not be employed. Legitimate "time out" procedures may be utilized under close and direct professional supervision as a technique in behavior-shaping programs.

(4) Behavior modification programs involving the use of noxious or aversive stimuli shall be reviewed and approved by the mental disabilities board of visitors and shall be conducted only with the express and informed consent of the affected resident, if the resident is able to give such consent, and of his parents or guardian or the responsible person appointed by the court after opportunities for consultation with independent specialists and with legal counsel. Such behavior modification programs shall be conducted only under the supervision of and in the presence of a professional person who has had proper training in such techniques.

(5) No resident shall be subjected to a behavior modification program which attempts to extinguish socially appropriate behavior or to develop new behavior patterns when such behavior modifications serve only institutional convenience.

(6) Electric shock devices shall be considered a research technique for the purpose of this part. Such devices shall be used only in extraordinary circumstances to prevent self-mutilation leading to repeated and possibly permanent physical damage to the resident and only after alternative techniques have failed. The use of such devices shall be subject to the conditions prescribed by this part for experimental research generally and shall be used

only under the direct and specific order of the professional person in charge of the residential facility.

History: En. 38-1227 by Sec. 27, Ch. 468, L. 1975; R.C.M. 1947, 38-1227; amd. Sec. 8, Ch. 485, L. 1979.

53-20-147. Right not to be subjected to experimental research. (1) Residents of a residential facility shall have a right not to be subjected to experimental research without the express and informed consent of the resident, if the resident is able to give such consent, and of his parents or guardian or the responsible person appointed by the court after opportunities for consultation with independent specialists and with legal counsel.

(2) Such proposed research shall first have been reviewed and approved by the mental disabilities board of visitors before such consent shall be sought. Prior to such approval, the board shall determine that such research complies with the principles of the statement on the use of human subjects for research of the American association on mental deficiency and with the principles for research involving human subjects required by the United States department of health, education, and welfare for projects supported by that agency.

History: En. 38-1228 by Sec. 28, Ch. 468, L. 1975; R.C.M. 1947, 38-1228.

53-20-148. Right to habilitation. (1) Persons admitted to residential facilities shall have a right to habilitation, including medical treatment, education, and care suited to their needs, regardless of age, degree of retardation, or handicapping condition. Each resident has a right to a habilitation program which will maximize his human abilities and enhance his ability to cope with his environment. Every residential facility shall recognize that each resident, regardless of ability or status, is entitled to develop and realize his fullest potential. The facility shall implement the principle of normalization so that each resident may live as normally as possible.

(2) Residents shall have a right to the least restrictive conditions necessary to achieve the purposes of habilitation. To this end, the facility shall make every attempt to move residents from:

(a) more to less structured living;

(b) larger to smaller facilities;

(c) larger to smaller living units;

(d) group to individual residence;

(e) segregated from the community to integrated into the community living;

(f) dependent to independent living.

(3) Within 30 days of his admission to a residential facility, each resident shall have an evaluation by appropriate specialists for programming purposes.

(4) Each resident shall have an individualized habilitation plan formulated by the facility. This plan shall be developed by appropriate professional persons and implemented as soon as possible, but no later than 30 days after the resident's admission to the facility. An interim program of habilitation, based on the preadmission evaluation conducted pursuant to this part, shall commence promptly upon the resident's admission. Each individualized habilitation plan shall contain:

(a) a statement of the nature of the specific limitations and the needs of the resident;

(b) a description of intermediate and long-range habilitation goals with a projected timetable for their attainment;

(c) a statement of and an explanation for the plan of habilitation for achieving these intermediate and long-range goals;

(d) a statement of the least restrictive setting for habilitation necessary to achieve the habilitation goals of the resident;

(e) a specification of the professional persons and other staff members who are responsible for the particular resident's attaining these habilitation goals;

(f) criteria for release to less restrictive settings for habilitation, based on the resident's needs, including criteria for discharge and a projected date for discharge.

(5) As part of his habilitation plan, each resident shall have an individualized postinstitutionalization plan that includes an identification of services needed to make a satisfactory community placement possible. This plan shall be developed by a professional person who shall begin preparation of such plan upon the resident's admission to the institution and shall complete such plan as soon as practicable. The parents or guardian or next of kin of the resident, the responsible person appointed by the court, if any, and the resident, if able to give informed consent, shall be consulted in the development of such plan and shall be informed of the content of such plan.

(6) In the interests of continuity of care, one professional person shall whenever possible be responsible for supervising the implementation of the habilitation plan, integrating the various aspects of the habilitation program, and recording the resident's progress as measured by objective indicators. This professional person shall also be responsible for ensuring that the resident is released when appropriate to a less restrictive habilitation setting.

(7) The habilitation plan shall be reviewed monthly by the professional person responsible for supervising the implementation of the plan and shall be modified if necessary. In addition, 6 months after admission and at least annually thereafter, each resident shall receive a comprehensive psychological, social, habilitative, and medical diagnosis and evaluation and his habilitation plan shall be reviewed by an interdisciplinary team of no less than two professional persons and such resident care workers as are directly involved in his habilitation and care. A habilitation plan shall be reviewed monthly.

(8) Each resident placed in the community shall receive transitional habilitation assistance.

(9) The professional person in charge of the residential facility shall report in writing to the parents or guardian of the resident or the responsible person at least every 6 months on the resident's habilitation and medical condition. Such report shall also state any appropriate habilitation program which has not been afforded to the resident because of inadequate habilitation resources.

(10) The parents or guardian of each resident or the responsible person appointed by the court shall promptly upon the resident's admission receive a written copy of all the above standards for adequate habilitation. Each resident, if the resident is able to comprehend, shall promptly upon his admission be orally informed in clear language of the above standards and, where appropriate, be provided with a written copy. In addition, the parents,

guardian, responsible person, and where able to comprehend, the resident shall receive such other information concerning the care and habilitation of the resident as may be available to assist them in understanding the situation of the resident and the rights of the resident in the institution.

History: En. 38-1222 by Sec. 22, Ch. 468, L. 1975; amd. Sec. 8, Ch. 37, L. 1977; R.C.M. 1947, 38-1222; amd. Sec. 9, Ch. 485, L. 1979.

53-20-149 through 53-20-160 reserved.

53-20-161. Maintenance of records. (1) Complete records for each resident shall be maintained and shall be readily available to professional persons, to the resident-care workers who are directly involved with the particular resident, and to the mental disabilities board of visitors. All information contained in a resident's records shall be considered privileged and confidential. The parents or guardian, the responsible person appointed by the court, and any person properly authorized in writing by the resident, if such resident is capable of giving informed consent, or by his parents or guardian or the responsible person shall be permitted access to the resident's records. No information may be released from the records of a resident or former resident of the residential facility unless the release of such information has been properly authorized in writing by:

(a) the court;

(b) the resident or former resident if he is over the age of majority and is capable of giving informed consent;

(c) the parents or guardian in charge of a resident under the age of 12;

(d) the parents or guardian in charge of a resident over the age of 12 but under the age of majority and the resident if the resident is capable of giving informed consent;

(e) the guardian of a resident over the age of majority who is incapable of giving informed consent;

(f) the superintendent of the residential facility or his designee as custodian of a resident over the age of majority who is incapable of giving informed consent and for whom no legal guardian has been appointed;

(g) the superintendent of the residential facility or his designee as custodian of a resident under the age of majority for whom there is no parent or legal guardian; or

(h) the superintendent of the residential facility or his designee as custodian of a resident of that facility whenever release is required by federal or state law or department of social and rehabilitation services rules.

(2) Information may not be released by a superintendent or his designee as set forth in subsection (1)(f), (1)(g), or (1)(h) less than 15 days after sending notice of the proposed release of information to the resident, his parents or guardian, the attorney who most recently represented the resident, if any, the responsible person appointed by the court, if any, and the court which ordered the admission. If any of the parties so notified objects to the release of information, they may petition the court for a hearing to determine whether the release of information should be allowed. No information may be released pursuant to subsection (1)(f), (1)(g), or (1)(h) unless it is released to further some legitimate need of the resident or to accomplish a legitimate purpose of the institution which is not inconsistent with the needs and rights

of the resident. No information may be released pursuant to these subsections except in accordance with written policies consistent with the requirements of this part adopted by the institution. Persons receiving notice of a proposed release of information shall also receive a copy of the written policy of the institution governing release of information.

(3) These records shall include:

(a) identification data, including the resident's legal status;

(b) the resident's history, including but not limited to:

(i) family data, educational background, and employment record;

(ii) prior medical history, both physical and mental, including prior institutionalization;

(c) the resident's grievances, if any;

(d) an inventory of the resident's life skills, including mode of communication;

(e) a record of each physical examination which describes the results of the examination;

(f) a copy of the individual habilitation plan and any modifications thereto and an appropriate summary which will guide and assist the resident care workers in implementing the resident's program;

(g) the findings made in monthly reviews of the habilitation plan, which findings shall include an analysis of the successes and failures of the habilitation program and shall direct whatever modifications are necessary;

(h) a copy of the postinstitutionalization plan that includes a statement of services needed in the community and any modifications thereto and a summary of the steps that have been taken to implement that plan;

(i) a medication history and status;

(j) a summary of each significant contact by a professional person with a resident;

(k) a summary of the resident's response to his habilitation plan, prepared by a professional person involved in the resident's habilitation and recorded at least monthly. Wherever possible, such response shall be scientifically documented.

(l) a monthly summary of the extent and nature of the resident's work activities and the effect of such activity upon the resident's progress along the habilitation plan;

(m) a signed order by a professional person for any physical restraints;

(n) a description of any extraordinary incident or accident in the facility involving the resident, to be entered by a staff member noting personal knowledge of the incident or accident or other source of information, including any reports of investigations of resident's mistreatment;

(o) a summary of family visits and contacts;

(p) a summary of attendance and leaves from the facility;

(q) a record of any seizures, illnesses, injuries, and treatments thereof and immunizations.

History: En. 38-1223 by Sec. 23, Ch. 468, L. 1975; R.C.M. 1947, 38-1223; amd. Sec. 10, Ch. 485, L. 1979.

53-20-162. Training for resident care workers. All resident care workers who have not had prior clinical experience in a residential facility for habilitation of the developmentally disabled shall have suitable orientation training. Staff members on all levels shall have suitable, regularly scheduled in-service training. Each resident care worker shall be under the direct professional supervision of a professional person.

History: **En. 38-1224 by Sec. 24, Ch. 468, L. 1975; R.C.M. 1947, 38-1224.**

53-20-163. Abuse of residents prohibited. (1) Every residential facility shall prohibit mistreatment, neglect, or abuse in any form of any resident. Alleged violations shall be reported immediately to the professional person in charge of the facility, and there shall be a written record that:

(a) each alleged violation has been thoroughly investigated and findings stated;

(b) the results of such investigation are reported to the professional person in charge of the facility within 24 hours of the report of the incident.

(2) Such reports shall also be made to the mental disabilities board of visitors monthly and to the developmental disabilities advisory council at its next scheduled public meeting. Each facility shall cause a written statement of this policy to be posted in each cottage and building and circulated to all staff members.

History: **En. 38-1225 by Sec. 25, Ch. 468, L. 1975; R.C.M. 1947, 38-1225.**

53-20-164. Resident labor. The following rules shall govern resident labor:

(1) No resident shall be required to perform labor which involves the operation and maintenance of the facility or for which the facility is under contract with an outside organization. Privileges or release from the facility shall not be conditioned upon the performance of labor covered by this provision. Residents may voluntarily engage in such labor if the labor is compensated in accordance with the minimum wage laws of the Fair Labor Standards Act, 29 U.S.C., sec. 206, as amended.

(2) No resident shall be involved in the care (feeding, clothing, bathing), training, or supervision of other residents unless he:

(a) has volunteered;

(b) has been specifically trained in the necessary skills;

(c) has the humane judgment required for such activities;

(d) is adequately supervised; and

(e) is reimbursed in accordance with the minimum wage laws of the Fair Labor Standards Act, 29 U.S.C., sec. 206, as amended.

(3) Residents may be required to perform vocational training tasks which do not involve the operation and maintenance of the facility, subject to a presumption that an assignment of longer than 3 months to any task is not a training task, provided the specific task or any change in task assignment is:

(a) an integrated part of the resident's habilitation plan and approved as a habilitation activity by a professional person responsible for supervising the resident's habilitation;

(b) supervised by a staff member to oversee the habilitation aspects of the activity.

(4) Residents may voluntarily engage in habilitative labor at nonprogram hours for which the facility would otherwise have to pay an employee, provided the specific labor or any change in labor is:

(a) an integrated part of the resident's habilitation plan and approved as a habilitation activity by a professional person responsible for supervising the resident's habilitation;

(b) supervised by a staff member to oversee the habilitation aspects of the activity; and

(c) compensated in accordance with the minimum wage laws of the Fair Labor Standards Act, 29 U.S.C., sec. 206, as amended.

(5) If any resident performs habilitative labor which involves the operation and maintenance of a facility but due to physical or mental disability is unable to perform the labor as efficiently as a person not so physically or mentally disabled, then such resident may be compensated at a rate which bears the same approximate relation to the statutory minimum wage as his ability to perform that particular job bears to the ability of a person not so afflicted.

(6) Residents may be required to perform tasks of a personal housekeeping nature, such as the making of one's own bed.

(7) Deductions or payments for care and other charges shall not deprive a resident of a reasonable amount of the compensation received pursuant to this section for personal and incidental purchases and expenses.

(8) Staffing shall be sufficient so that the facility is not dependent upon the use of residents or volunteers for the care, maintenance, or habilitation of other residents or for income-producing services. The facility shall formulate a written policy to protect the residents from exploitation when they are engaged in productive work.

History: **En. 38-1229 by Sec. 29, Ch. 468, L. 1975; R.C.M. 1947, 38-1229; amd. Sec. 11, Ch. 485, L. 1979.**

53-20-165. Clothing for residents discharged or conditionally released. A resident may not be discharged or conditionally released from a residential facility for the developmentally disabled without suitable reasonable clothing that will allow the resident to make a normal appearance in the community.

History: **En. Sec. 12, Ch. 485, L. 1979.**

Compiler's Comments

Codification. Sec. 13, Ch. 485, L. 1979, provided: "Section 12 is intended to be codified as an integral part of Title 53, chapter 20, part 1, and the provisions of Title 53, chapter 20, part 1, apply to section 12."

Part 2

Community-Based Services

53-20-201. Short title. This part shall be known and may be cited as the "Montana Developmental Disabilities Services and Facilities Act of 1974".

History: **En. 80-2611 by Sec. 1, Ch. 325, L. 1974; redes. 71-2401 by Sec. 10, Ch. 239, L. 1975; R.C.M. 1947, 71-2401.**

53-20-202. Definitions. As used in this part, the following definitions apply:

(1) "Comprehensive developmental disability system" means a system of services, including but not limited to the following basic services, with the intention of providing alternatives to institutionalization:

(a) evaluation services;
(b) diagnostic services;
(c) treatment services;
(d) day-care services;
(e) training services;
(f) education services;
(g) employment services;
(h) recreation services;
(i) personal-care services;
(j) domiciliary-care services;
(k) special living arrangements services;
(l) counseling services;
(m) information and referral services;
(n) follow-along services;
(o) protective and other social and sociolegal services; and
(p) transportation services.

(2) "Department" means the department of social and rehabilitation services.

(3) "Developmental disabilities" means disabilities attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurological handicapping condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals if the disability originated before the person attained age 18, has continued or can be expected to continue indefinitely, and constitutes a substantial handicap of the person.

(4) "Developmental disabilities facility" means any service or group of services offering care to the developmentally disabled on an inpatient, outpatient, residential, clinical, or other programmatic basis.

(5) "Planning and advisory council" or "council" means the developmental disabilities planning and advisory council created in 2-15-2204(1), (2), (3), and (10).

History: En. 80-2612 by Sec. 2, Ch. 325, L. 1974; R.C.M. 1947, 80-2612; amd. and redes. 71-2402 by Sec. 1, Ch. 239, L. 1975; amd. Sec. 1, Ch. 559, L. 1977; R.C.M. 1947, 71-2402.

53-20-203. Responsibilities of department. The department shall:

(1) take cognizance of matters affecting the developmentally disabled citizens of the state;

(2) initiate a preventive developmental disabilities program which shall include but not be limited to the implementation of developmental disabilities care, treatment, prevention, and research as can best be accomplished by community-centered services. Every means shall be utilized to initiate and operate the service program in cooperation with local agencies under the provisions of 53-20-205 and 53-20-207.

(3) collect and disseminate information relating to developmental disabilities;

(4) prepare, with the assistance of the planning and advisory council, an annual comprehensive plan for the initiation and maintenance of developmental disabilities services in the state. The services shall include but not be limited to community comprehensive developmental disabilities services as referred to in 53-20-202.

(5) provide to the planning and advisory council a written quarterly report of planning, program, and fiscal activities of the department in regard to community-based services for the developmentally disabled;

(6) provide by rule for the evaluation of persons who apply for services or persons admitted into a program at a developmental disability facility;

(7) provide state personnel to assist regional councils provided for in 53-20-207;

(8) receive from agencies of the government of the United States and other agencies, persons or groups of persons, associations, firms, or corporations grants of money, receipts from fees, gifts, supplies, materials, and contributions to initiate and maintain developmental disabilities services within the state; and

(9) require that habilitation plans be developed, implemented, and continuously maintained for all developmentally disabled persons who are served through a community-based program funded by the state.

History: En. 80-2613 by Sec. 3, Ch. 325, L. 1974; R.C.M. 1947, 80-2613; amd. and redes. 71-2403 by Sec. 2, Ch. 239, L. 1975; amd. Sec. 2, Ch. 559, L. 1977; R.C.M. 1947, 71-2403; amd. Sec. 1, Ch. 414, L. 1979.

53-20-204. Rules. (1) The department may adopt rules necessary for the proper administration of this part.

(2) The department shall adopt rules in cooperation with the board of nursing under which a properly trained staff member of a facility providing services to developmentally disabled persons under this part may assist and supervise a client of the facility in taking medication if the medication is usually self-administered and if a physician has prescribed the assistance.

History: En. 80-2614 by Sec. 4, Ch. 325, L. 1974; R.C.M. 1947, 80-2614; amd. and redes. 71-2404 by Sec. 3, Ch. 239, L. 1975; amd. Sec. 41, Ch. 37, L. 1977; amd. Sec. 3, Ch. 559, L. 1977; R.C.M. 1947, 71-2404(1), (4).

53-20-205. Community services. (1) The department may establish and administer community comprehensive services, programs, clinics, or other facilities throughout the state for the purpose of aiding in the prevention, diagnosis, amelioration, or treatment of developmental disabilities. Programs, clinics, or other services may be provided directly by state agencies or indirectly through contract or cooperative arrangements with other agencies of government, regional or local, private or public agencies, private professional persons, or accredited health or long-term care facilities.

(2) The department may contract for programs for developmental disabilities services. Contracts entered into by the department shall contain specific conditions for performance by the contractor. It shall set minimum standards for programs and establish appropriate qualifications for persons employed in such programs.

(3) All developmental disabilities facilities and services shall comply with existing federal guidelines and with requirements which will enable the services and facilities to qualify for available aid funds. However, nothing herein requires facilities serving the developmentally disabled to meet the same or equal standards as licensed medical facilities unless the developmental disabilities facility is providing professional or skilled medical care.

(4) Comprehensive services, programs, clinics, or other facilities established or provided by the department under this part shall conform as nearly

as possible to the plans of the advisory council created under 2-15-2204 and the regional councils provided for in 53-20-207.

(5) The department may promote scientific and medical research investigations relative to the incidence, cause, prevention, and care of persons with developmental disabilities.

History: (1), (4)En. 80-2615 by Sec. 5, Ch. 325, L. 1974; R.C.M. 1947, 80-2615; amd. and redes. 71-2405 by Sec. 4, Ch. 239, L. 1975; amd. Sec. 42, Ch. 37, L. 1977; Sec. 71-2405, R.C.M. 1947; (2), (3)En. 80-2614 by Sec. 4, Ch. 325, L. 1974; R.C.M. 1947, 80-2614; amd. and redes. 71-2404 by Sec. 3, Ch. 239, L. 1975; amd. Sec. 41, Ch. 37, L. 1977; amd. Sec. 3, Ch. 559, L. 1977; Sec. 71-2404, 71-2404(2), (3), 71-2405, R.C.M. 1947; amd. Sec. 13, Ch. 38, L. 1979; (5)En. Sec. 2, Ch. 414, L. 1979.

53-20-206. Planning and advisory council. (1) The planning and advisory council may elect from among its members the officers necessary for the proper management of the council.

(2) The council may adopt rules governing its own organization and procedures.

(3) A majority of the members of the council constitutes a quorum for the transaction of business.

(4) The council may employ and fix the compensation and duties of necessary staff.

(5) A council member, unless he is a full-time salaried officer or employee of this state or any of the political subdivisions of this state, is entitled to be paid in an amount to be determined by the council, not to exceed $25, for each day in which he is actually and necessarily engaged in the performance of council duties. A council member is also entitled to be reimbursed for travel expenses incurred while in the performance of council duties as provided for in 2-18-501 through 2-18-503. Members who are full-time salaried officers or employees of this state or any political subdivisions of this state are not entitled to be compensated for their service as members but are entitled to be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503.

(6) The council shall:

(a) advise the department, other state agencies, councils, local governments, and private organizations on programs for services to the developmentally disabled;

(b) develop a plan for a statewide system of community-based services for the developmentally disabled; and

(c) serve in any capacity required by federal law for the administration of federal programs for services to the developmentally disabled.

History: En. 71-2406 by Sec. 5, Ch. 239, L. 1975; amd. Sec. 4, Ch. 559, L. 1977; R.C.M. 1947, 71-2406(4) thru (9).

53-20-207. Regional councils. (1) The department shall approve a citizens' organization as a regional council for each of the following five regions:

(a) region one, consisting of Phillips, Valley, Daniels, Sheridan, Roosevelt, Garfield, McCone, Richland, Dawson, Prairie, Wibaux, Treasure, Rosebud, Custer, Fallon, Powder River, and Carter Counties;

(b) region two, consisting of Glacier, Toole, Liberty, Hill, Blaine, Pondera, Teton, Chouteau, and Cascade Counties;

(c) region three, consisting of Judith Basin, Fergus, Petroleum, Wheatland, Golden Valley, Musselshell, Sweet Grass, Stillwater, Yellowstone, Big Horn, and Carbon Counties;

(d) region four, consisting of Powell, Lewis and Clark, Granite, Deer Lodge, Silver Bow, Jefferson, Broadwater, Meagher, Beaverhead, Madison, Gallatin, and Park Counties; and

(e) region five, consisting of Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, and Ravalli Counties.

(2) Under guidelines adopted by the department, a citizens' organization approved by the department shall be broadly representative of the region, and at least one-third of its members shall be consumers or representatives of consumers or consumer organizations in the discipline of developmental disabilities.

(3) A citizens' organization shall be approved under procedures and rules adopted by the department.

(4) A regional council member who is not a full-time employee of the state or of a county is entitled to be reimbursed in an amount to be determined by the department, not to exceed $25, for each day actually and necessarily engaged in the performance of council duties and for expenses as provided in 2-18-501 through 2-18-503. A council member who is a full-time state or county employee may not be compensated for service as a member of a regional council but shall be reimbursed for expenses as provided for in 2-18-501 through 2-18-503.

(5) A regional council shall:

(a) make an annual written review and evaluation of needs and services within the region and provide a copy of the review and evaluation to the planning and advisory council;

(b) advise the department, other state agencies, councils, local governments, and private organizations on programs for services to the developmentally disabled within the region; and

(c) develop a plan for a system of community-based services for the developmentally disabled within the region and provide a copy of the plan to the planning and advisory council.

History: En. 71-2407 by Sec. 6, Ch. 239, L. 1975; amd. Sec. 5, Ch. 559, L. 1977; R.C.M. 1947, 71-2407; amd. Sec. 3, Ch. 414, L. 1979.

53-20-208. Contributions of counties and municipalities. (1) The boards of county commissioners of the several counties and the governing bodies of municipalities of this state may, in their discretion, contribute to any developmental disabilities facility approved by the department, without regard to whether they are within or outside of their respective jurisdictions. The boards of county commissioners of the counties may levy a tax up to but not to exceed 1 mill on each dollar of taxable property within the county, which shall be in addition to all other county tax levies. All proceeds of the tax, if levied, shall be used for the sole purpose of support of developmental disabilities services.

(2) For the purpose of carrying out the provisions of this section, boards of county commissioners and governing bodies of municipalities may appropriate out of the general fund of their respective counties or municipalities.

History: En. 80-2619 by Sec. 9, Ch. 325, L. 1974; Sec. 80-2619, R.C.M. 1947; amd. and redes. 71-2408 by Sec. 7, Ch. 239, L. 1975; R.C.M. 1947, 71-2408.

53-20-209. Eligibility for services. Any person suspected of a developmental disability shall be eligible for initial intake and for diagnostic and counseling services through any comprehensive developmental disability center without reference to any other eligibility criteria.

History: En. 80-2621 by Sec. 11, Ch. 325, L. 1974; Sec. 80-2621, R.C.M. 1947; redes. 71-2409 by Sec. 10, Ch. 239, L. 1975; R.C.M. 1947, 71-2409.

53-20-210. Application to reservation Indians. For purposes of this part, Indian people living within federal Indian reservations shall be entitled to all services provided for under this part.

History: En. 80-2622 by Sec. 12, Ch. 325, L. 1974; Sec. 80-2622, R.C.M. 1947; redes. 71-2410 by Sec. 10, Ch. 239, L. 1975; R.C.M. 1947, 71-2410.

53-20-211. No effect on existing facilities. Nothing in this part shall be construed to prevent the continuation of existing developmental disabilities facilities or services in the state.

History: En. 80-2623 by Sec. 13, Ch. 325, L. 1974; Sec. 80-2623, R.C.M. 1947; redes. 71-2411 by Sec. 10, Ch. 239, L. 1975; R.C.M. 1947, 71-2411.

53-20-212. Discrimination forbidden. The services provided under this part shall be made available without discrimination on the basis of race, color, creed, religion, or ability to pay and shall comply with the provisions of Title VI of the federal Civil Rights Act of 1964.

History: En. 80-2624 by Sec. 14, Ch. 325, L. 1974; Sec. 80-2624, R.C.M. 1947; redes. 71-2412 by Sec. 10, Ch. 239, L. 1975; amd. Sec. 16, Ch. 38, L. 1977; R.C.M. 1947, 71-2412.

53-20-213. Departments to cooperate. The department of institutions, the department of social and rehabilitation services, the department of health and environmental sciences, and the office of superintendent of public instruction shall cooperate on all aspects of each agency's respective programs for the developmentally disabled.

History: En. 71-2414 by Sec. 8, Ch. 239, L. 1975; amd. Sec. 6, Ch. 559, L. 1977; R.C.M. 1947, 71-2414(1).

53-20-214. Certain transfers of funds authorized. Funds appropriated to the department of institutions, Warm Springs state hospital, Galen state hospital, or Boulder River school and hospital may be transferred by budget amendment as provided in appropriation acts and with the approval of the governor to the department of social and rehabilitation services for comprehensive developmental disability systems if residents of any of those institutions are transferred to a comprehensive developmental disability system resulting in less expenditures at that institution than allowed by legislative appropriation.

History: En. 71-2414 by Sec. 8, Ch. 239, L. 1975; amd. Sec. 6, Ch. 559, L. 1977; R.C.M. 1947, 71-2414(2).

Part 3

Community Homes

53-20-301. Purpose. The legislature, in recognition of the wide and varied needs of developmentally disabled persons and of the desirability of meeting these needs on a community level to the fullest extent possible and in order to reduce the need for care in existing state institutions, establishes by this part a community developmentally disabled home program to provide facilities and services for the training and treatment of the developmentally disabled in family-oriented residences and establishes a program to provide such homes through local nonprofit corporations.

History: En. Sec. 1, Ch. 373, L. 1973; amd. Sec. 1, Ch. 149, L. 1974; amd. Sec. 1, Ch. 385, L. 1975; R.C.M. 1947, 71-2001.

53-20-302. Definition of community home — limitation on number of residents. A community home for the developmentally disabled is a family-oriented residence or home designed to provide facilities for two to eight developmentally disabled persons, established as an alternative to existing state institutions. The number of developmentally disabled persons may not exceed eight in such a community home, except that the department of social and rehabilitation services may grant written approval for more than eight but not more than twelve persons.

History: En. Sec. 2, Ch. 373, L. 1973; R.C.M. 1947, 71-2002.

53-20-303. Parties authorized to establish and operate community homes. (1) Nonprofit corporations or associations may be formed or organized in any community for the purposes of establishing a community home or homes for the developmentally disabled under this part and to receive services, facilities, and funds as the department of social and rehabilitation services and other governmental units may be authorized by law to provide.

(2) The department may also establish a community home or homes for the developmentally disabled under this part and receive services, facilities, and funds as the department and other governmental units may be authorized by law to provide.

History: En. Sec. 3, Ch. 373, L. 1973; amd. Sec. 2, Ch. 149, L. 1974; R.C.M. 1947, 71-2003.

53-20-304. Department contracts with nonprofit corporations — governmental units providing for community homes. (1) The department of social and rehabilitation services may contract with nonprofit corporations or associations to provide facilities and services for the developmentally disabled in community homes for the developmentally disabled and is authorized to expend moneys appropriated or available for that purpose.

(2) Governmental units, including but not limited to counties, municipalities, school districts, or state institutions of higher learning, are authorized to provide, at their own expense, funds, materials, facilities, and services for community homes for the developmentally disabled.

History: En. Sec. 4, Ch. 373, L. 1973; amd. Sec. 3, Ch. 149, L. 1974; amd. Sec. 2, Ch. 385, L. 1975; R.C.M. 1947, 71-2004.

53-20-305. Local control of community homes — departmental licensing, administration, operation, health and safety standards. Community homes for the developmentally disabled may be under local control, and the nonprofit corporations or associations operating community homes are authorized to establish homes and programs they believe in the best interest of their homes.

(1) A community home for the developmentally disabled shall be licensed annually by the department of social and rehabilitation services.

(2) One temporary license may be issued for no longer than 60 days if there are unavoidable delays in the certification process.

(3) (a) The department for the purpose of licensing shall adopt standards and rules concerning the administration, operation, health, and safety of community homes for the developmentally disabled.

(b) The department of health and environmental sciences shall provide advice and recommendations to the department of social and rehabilitation services concerning the standards for health and safety.

History: En. Sec. 5, Ch. 373, L. 1973; amd. Sec. 4, Ch. 149, L. 1974; R.C.M. 1947, 71-2005; amd. Sec. 1, Ch. 271, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "The director of the department of social and rehabilitation services shall adopt reasonable rules and standards to carry out the administration and purposes of this part." after "best interest of their homes."; added subsections (1) through (3).

Statement of Intent: The statement of intent attached to SB 137 (Ch. 271, L. 1981) provided: "A statement of intent is required for this bill because it amends 53-20-305, MCA, and 53-20-307, MCA, to give the department of social and rehabilitation services the authority for the purposes of Title 53, chapter 20, part 3, to license community group homes and for rulemaking in relation to that licensing.

Title 53, chapter 20, part 3, provides for community homes for developmentally disabled persons. It was the intent of part 3 to provide for the regulation of community homes by the department of social and rehabilitation services and the department of health and environmental sciences. The department of social and rehabilitation services was given authority to adopt reasonable rules and standards to carry out the administration and purposes of part 3. The department of health and environmental sciences was given the authority to license community homes to insure the sanitation and safety of the residents. The authority was given the department of social and rehabilitation services to license community homes in order to insure the quality of services provided. The authority to adopt rules relating to that licensing was not explicitly provided. The department of social and rehabilitation services has had to act under implied authority in licensing community group homes and adopting rules relating to licensing.

This bill provides the department of social and rehabilitation services with explicit authority for the licensing of community group homes and for adopting rules relating to that licensing.

Among the areas that the rules relating to licensing will address are the following: facility acquisition, facility design, group home staffing, staff training, service goals and design, quality of services, client placement procedure, client rights and privileges, client grievance procedure, provider grievance procedure, and accounting procedures including accounting of client financial resources. Rules dealing with health and safety will be developed with the assistance of the department of health and environmental sciences, including water and waste disposal, food service, laundry, and safety standards which are compatible with the residential character of the facility.

The physical well-being and safety of the clients is provided for in that the group homes are to be certified for fire and life safety by the state fire marshal who shall adopt standards and notify the department upon certification of a community home as complying with those standards."

53-20-306. Federal aid. The department of social and rehabilitation services is authorized to apply for and receive federal-aid money or other assistance which may be available for programs in the nature of the program created by this part.

History: En. Sec. 6, Ch. 373, L. 1973; amd. Sec. 5, Ch. 149, L. 1974; R.C.M. 1947, 71-2006.

53-20-307. Health and safety standards for licensing. (1) (a) After initial certification by the state fire marshal, community homes must be certified annually for fire and life safety by the state fire marshal.

(b) The state fire marshal shall notify the department of social and rehabilitation services when a community home has been certified.

(2) (a) Local health officers shall certify community homes for compliance with health and safety standards. If for any reason the local authority cannot complete the certification in a timely manner, the department of health and environmental sciences is authorized to make the determination on certification.

(b) A reasonable fee may be charged to authorized parties as defined in 53-20-303 for the health and safety certification.

History: **En. Sec. 7, Ch. 373, L. 1973; R.C.M. 1947, 71-2007; amd. Sec. 2, Ch. 271, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted the entire section for "The department of health and environmental sciences shall promulgate and adopt standards and rules for the licensing of community homes for the developmentally disabled and to insure the health and safety of the residents of such homes."

Statement of Intent: The statement of intent attached to SB 137 (Ch. 271, L. 1981) provided: "A statement of intent is required for this bill because it amends 53-20-305, MCA, and 53-20-307, MCA, to give the department of social and rehabilitation services the authority for the purposes of Title 53, chapter 20, part 3, to license community group homes and for rulemaking in relation to that licensing.

Title 53, chapter 20, part 3, provides for community homes for developmentally disabled persons. It was the intent of part 3 to provide for the regulation of community homes by the department of social and rehabilitation services and the department of health and environmental sciences. The department of social and rehabilitation services was given authority to adopt reasonable rules and standards to carry out the administration and purposes of part 3. The department of health and environmental sciences was given the authority to license community homes to insure the sanitation and safety of the residents. The authority was given the department of social and rehabilitation services to license community homes in order to insure the quality of services provided. The authority to adopt rules relating to that licensing was not explicitly provided. The department of social and rehabilitation services has had to act under implied authority in licensing community group homes and adopting rules relating to licensing.

This bill provides the department of social and rehabilitation services with explicit authority for the licensing of community group homes and for adopting rules relating to that licensing.

Among the areas that the rules relating to licensing will address are the following: facility acquisition, facility design, group home staffing, staff training, service goals and design, quality of services, client placement procedure, client rights and privileges, client grievance procedure, provider grievance procedure, and accounting procedures including accounting of client financial resources. Rules dealing with health and safety will be developed with the assistance of the department of health and environmental sciences, including water and waste disposal, food service, laundry, and safety standards which are compatible with the residential character of the facility.

The physical well-being and safety of the clients is provided for in that the group homes are to be certified for fire and life safety by the state fire marshal who shall adopt standards and notify the department upon certification of a community home as complying with those standards."

Part 4

Protective Services

53-20-401. Definitions. As used in this part, unless the context otherwise requires, the following definitions apply:

(1) "Department" means the department of social and rehabilitation services.

(2) "Developmentally disabled person" means a person who by reason of a developmental disability is not able, unassisted, to properly manage or care for his person or his property.

(3) "Ward" means a person for whom protective services are rendered pursuant to the provisions of this part.

(4) "Respondent" means a person in whose interest proceedings are brought under this part.

History: En. Sec. 1, Ch. 508, L. 1973; R.C.M. 1947, 71-1901.

53-20-402. Legislative findings and directives. (1) In recognition of the need to provide supervision and protection from exploitation for the developmentally disabled and in acknowledgment of the desirability of providing such services outside the state institutions, the legislature hereby finds and declares that a program should be established by the department to provide protective services for the developmentally disabled. Such a program should be designed to provide the services set forth in this part for developmentally disabled persons.

(2) The director of the department shall adopt rules for the administration of this part. The department shall develop a statewide system of protective service in accordance with regulations and standards established by the department with respect to this program. The department may:

(a) provide direct services;

(b) enter into a contract with any responsible agency, public or private, for provision of protective service by the agency;

(c) accept appointment by any district court as guardian, conservator, trustee, protector, or trustee and protector of a mentally retarded or other developmentally disabled person. However, this subsection does not relieve the department of the duty to comply with the requirements of Title 72, chapter 5, for the appointment of a guardian or conservator or the requirements of 53-20-406.

History: En. Sec. 2, Ch. 508, L. 1973; R.C.M. 1947, 71-1902; amd. Sec. 1, Ch. 343, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "conservator" after "guardian" in the first sentence of (2)(c); added the last sentence of (2)(c) relating to guardian or conservator requirements.

53-20-403. Application for protective services. (1) Protective services may be provided on a voluntary basis for any developmentally disabled person who requests them for himself or at the request of any interested person, when the department determines that such person is a developmentally disabled person who would benefit from services provided in this part and that the department is currently able to supply services to such person. A parent may name the department as guardian of the developmentally disabled person in his will. A parent may also name the department as guardian or trustee of the developmentally disabled person to assume such duties during the parents' lifetime. Voluntary services may be discontinued upon the written request of the ward or any personal representative of the ward. Any appointment of the department as guardian by the parent of a developmentally disabled person, either by will or by appointment during the parent's lifetime, must comply with and is governed by the requirements of Title 72, chapter 5, part 3.

(2) Application for protective services under this part shall be made to the designated field staff of the department or other designated state agency in the county in which the applicant resides, and the application shall be transmitted promptly to the department. Such application shall be in writing or reduced to writing in the manner and upon the form prescribed by the

department and shall contain the name, age, and residence of the applicant and such other information as may be required by the rules of the department. The rules of the department shall simplify the application process in order that protective services may be furnished as soon as possible. Adequate safeguards shall be established by the department to insure that only eligible persons receive protective services under this part. The department shall notify the applicant and the designated field staff of the department or other designated state agency in writing of its decision concerning eligibility for protective services.

History: En. Sec. 3, Ch. 508, L. 1973; amd. Sec. 39, Ch. 37, L. 1977; R.C.M. 1947, 71-1903; amd. Sec. 2, Ch. 343, L. 1981.

Compiler's Comments

1981 Amendment: Added the last sentence of (1) relating to compliance with Title 72, ch. 5, part 3.

53-20-404. Petition to make developmentally disabled person ward of department. (1) Any developmentally disabled person may be made a ward of the department by a judicial proceeding which shall be initiated when any reputable person, including the potential ward, or the department shall file in the district court of the county in which the respondent resides or is physically present a verified petition alleging that the respondent is a developmentally disabled person, describing the nature and extent of the respondent's disability, and alleging that it will be in the best interests of the respondent that he be made a ward of the department. The petition shall be accompanied by a report of the findings of an evaluation team composed of but not limited to a physician, a psychologist, and a social worker and expressing the belief that the respondent is developmentally disabled to an extent which would cause the respondent to benefit from the protective services provided for in this part.

(2) Upon the filing of such verified petition and team evaluation statement, the court shall issue an order fixing the time and place of a hearing on such petition, which time shall be no earlier than 7 days or later than 14 days after the filing thereof. Such order shall appoint an attorney for the respondent, whose duty shall be to make such investigation as is necessary to protect the rights of the respondent and to attend all hearings in the matter. Such order shall also advise the respondent of his right to appear at the hearing and shall give the address and telephone number of the attorney. Personal service shall be made on the respondent, the department, the county attorney, and attorney at least 5 days prior to the hearing date. The department, the county attorney, and the attorney may waive service.

(3) Upon hearing, the petitioner shall present the evidence to the court. When the court is fully advised, it shall determine whether the respondent is a developmentally disabled person who would benefit from the protective services provided for in this part and whether it is in the best interest of the respondent that he be made a ward of the department and, if it is so found, the court shall enter an order that the respondent is made the ward of the department; otherwise, the petition shall be dismissed.

(4) If in addition to seeking authorization for the department to provide protective services the petition seeks to impose any legal disabilities on the

ward, the petition shall be treated as a petition to create a guardianship or, if appropriate, a conservatorship, and the provisions of Title 72, chapter 5, part 3, or, if appropriate, Title 72, chapter 5, part 4, apply.

(5) Every proceeding under this part shall be civil in nature and shall be entitled "In the interest of ...., respondent" or "In the interest of ...., ward", as the case may be.

History: En. Sec. 4, Ch. 508, L. 1973; R.C.M. 1947, 71-1904; amd. Sec. 3, Ch. 343, L. 1981.

Compiler's Comments

1981 Amendment: Substituted subsection (4) for former subsection (4) relating to rights and disabilities in a more general fashion. For former version, see sec. 4, Ch. 508, L. 1973.

53-20-405. Protective and supportive services provided. (1) The department shall provide, in the manner set forth, for each of its wards those protective and supportive services which the department believes necessary to help the ward function to the extent of his capabilities as an independent, self-sufficient member of society. Services under this part may include but shall not be limited to assistance in obtaining:

(a) housing, clothing, and food;

(b) education and training for living in society and, where possible, for employment;

(c) employment;

(d) financial benefits to which the ward may be entitled;

(e) medical services and supplies;

(f) necessary legal services;

(g) marshaling, protection, and insurance of the ward's property;

(h) financial advice and services;

(i) participation in cultural and recreational activities.

(2) Services under this part may also include but shall not be limited to assistance in preventing exploitation of the ward by others and in preventing injury to the ward and injury by the ward to others.

(3) The provision of protective services pursuant to this part does not create a guardianship relationship between the department and the developmentally disabled person unless a guardianship is created in accordance with the requirements of Title 72, chapter 5, part 3.

History: En. Sec. 5, Ch. 508, L. 1973; R.C.M. 1947, 71-1905; amd. Sec. 4, Ch. 343, L. 1981.

Compiler's Comments

1981 Amendment: Added subsection (3).

53-20-406. Department as conservator of small estate of person adjudicated developmentally disabled. The department may be appointed as conservator of the estate of any person adjudicated developmentally disabled if the department is providing protective services for such person and if it shall appear to the court that the value of the assets of such person does not exceed $10,000 and that there is no other person or institution whose appointment in such capacity would be more appropriate. The department shall report annually to the court which appointed it on the discharge of its duties as conservator of an estate under this section and shall otherwise be subject to the requirements of Title 72, chapter 5, part 4. Any appointment of the department as conservator of the estate of a developmentally disabled person made pursuant to this section is governed by and must comply with the requirements of Title 72, chapter 5, part 4.

History: **En. Sec. 6, Ch. 508, L. 1973; R.C.M. 1947, 71-1906; amd. Sec. 5, Ch. 343, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "Title 72, chapter 5, part 4" for "a general guardian" at the end of the second sentence; added the last sentence relating to compliance with Title 72, ch. 5, part 4.

53-20-407. Manner of providing protective services. The department shall engage in the direct provision of protective services to wards. If a service comprehended by this part is provided by persons or agencies acting under other state or federal laws, the department shall cooperate with such persons or agencies in obtaining such services for wards of the department. If necessary services cannot be obtained without charge, the department may purchase such services from individuals, voluntary agencies, community centers, or clinics and, to the extent not prohibited by law, from other state agencies.

History: **En. Sec. 7, Ch. 508, L. 1973; R.C.M. 1947, 71-1907.**

53-20-408. Bond not required — exception. The department shall not be required to post bond in proceedings under this part unless serving as a court-appointed conservator as provided in 53-20-406, in which case it shall furnish such bond as required by law.

History: **En. Sec. 8, Ch. 508, L. 1973; R.C.M. 1947, 71-1908.**

53-20-409. Costs of protective services. (1) If the income from the assets available to a ward suffice, the department may require such ward, the custodian, guardian, or conservator of such ward or, if the governing instrument permits, the trustee of such ward to pay all reasonable and proper costs of proceedings in the interest of such ward under this part, including, without limitation, court costs, sheriff fees, attorney fees, and costs of diagnostic services, and to pay for protective services rendered to the ward or to reimburse the department for funds expended for such costs or services.

(2) Upon a written petition filed by the department, the court by which the department was appointed may permit annual expenditure of up to 3% of the principal assets if such expenditure be shown to be of special advantage for the ward. The department shall file an accounting each year, and the court by which the department was appointed shall conduct a hearing to determine the propriety of any charge or charges to a ward. All of the provisions of subsections (2) and (3) of 53-20-404 concerning notice and hearings shall apply to hearings under this section. Upon such hearing, the court shall enter its order approving, disapproving, or modifying such charge or charges. The order of the court may be prospective as to charges of a recurring nature which reasonably may be anticipated.

(3) Except as provided in subsections (1) and (2) of this section, the net cost of proceedings under this part and of services provided by the department shall be paid from moneys appropriated for that purpose by the legislature or from moneys available from any other governmental or private source. Claims for state reimbursements shall be presented to the department at such times and in such manner as the department may prescribe. The

department shall certify the amount to the department of administration. The amount so certified shall be paid from the state treasury upon the voucher of the department and the warrant of the department of administration.

History: **En. Sec. 9, Ch. 508, L. 1973; R.C.M. 1947, 71-1909.**

53-20-410. Reports required. With respect to each ward, designated field staff shall file a written report with the director of the department no later than June 30, 1974, and annually thereafter setting forth the services which have been provided for the ward, including specifically an accounting for any transactions with property of the ward other than as a court-appointed conservator, the current condition of the ward, and the recommendations of the department as to whether its services should continue or be terminated and whether other proceedings should be instituted. If the department is serving pursuant to court order under 53-20-404, a copy of such report also shall be filed with such court.

History: **En. Sec. 10, Ch. 508, L. 1973; R.C.M. 1947, 71-1910(1).**

53-20-411. Termination of protective services. Upon the written request of the ward, the department, or any other reputable person or upon its own motion, the appointing court shall hold a hearing to determine whether the appointment of the department should be terminated or continued. All of the provisions of subsections (2) and (3) of 53-20-404 concerning notice and hearing shall apply to hearings under this section. No ward may request such hearing more frequently than at 6-month intervals. Upon such hearing, the court shall enter its order continuing or terminating the appointment of the department.

History: **En. Sec. 11, Ch. 508, L. 1973; R.C.M. 1947, 71-1911.**

53-20-412. Records separate and public. The clerk of the district or probate court shall maintain records and papers in proceedings under this part separately. The information contained in such records shall be available to public officials, attorneys, and persons having bona fide business dealings with the respondents concerned.

History: **En. Sec. 12, Ch. 508, L. 1973; R.C.M. 1947, 71-1912.**

53-20-413. Acceptance and expenditure of donated funds. The department may, on behalf of the state of Montana, accept and expend grants, gifts, and legacies of money and other property, including federal grants in furtherance of the purposes of this part subject to any reasonable and proper conditions any donor may attach which are acceptable to the director of the department and which do not violate the constitution, laws, or public policy of the state of Montana.

History: **En. Sec. 13, Ch. 508, L. 1973; R.C.M. 1947, 71-1913.**

53-20-414. Department to compile list of qualified visitors. The department shall compile and provide to each district court within the state a list of professional persons within the region where the district court is located who possess competencies in the evaluation and habilitation of persons with developmental disabilities and who may be available to the court to act as visitors or to otherwise provide evaluation services in guardianship proceedings involving developmentally disabled persons, together with an indication of the particular competencies the professional person possesses.

History: **En. Sec. 6, Ch. 343, L. 1981.**

Compiler's Comments

Codification Instruction: Subsection (1), sec. 8, Ch. 343, L. 1981, provided: "Section 6 is intended to be codified as an integral part of Title 53, chapter 20, part 4, and the provisions of Title 53, chapter 20, part 4, apply to section 6."

Part 5

State-Owned Facilities

53-20-501. Primary function of Boulder River school and hospital and Eastmont training center. The primary functions of the Boulder River school and hospital and the Eastmont training center are the care, treatment, training, education, and necessary medical treatment of mentally retarded persons.

History: **En. Sec. 4, Ch. 111, L. 1971; amd. Sec. 72, Ch. 120, L. 1974; R.C.M. 1947, 80-2604.**

53-20-502. Location of and services provided by Eastmont training center. The mental retardation center at Glendive is the Eastmont training center for residential and outpatient care of mentally retarded persons residing in Montana. The center may admit mentally retarded persons not residing in Montana in those circumstances in which Montana has agreed to do so by agreement with any other state. The center shall provide services similar to those provided at Boulder River school and hospital. However, the center may not be a duplication of Boulder River school and hospital but shall be an extension thereof.

History: **En. Sec. 3, Ch. 255, L. 1967; amd. Sec. 1, Ch. 275, L. 1969; amd. Sec. 1, Ch. 101, L. 1973; amd. Sec. 58, Ch. 120, L. 1974; R.C.M. 1947, 80-2310.**

53-20-503. Glendive nursing home facility. The state-owned nursing home facility located at Glendive is to be used to provide services to any patient population served by the department of institutions or the department of social and rehabilitation services.

History: **En. Sec. 1, Ch. 537, L. 1979.**

Compiler's Comments

Codification. Sec. 4, Ch. 537, L. 1979, provided: "It is intended that sections 1 and 2 be codified as an integral part of Title 53, chapter 20, part 5, and the provisions of Title 53, chapter 20, part 5, apply to section 1 and 2." Section 3 was added to Chapter 537, but the instructions for codification were apparently overlooked.

Effective date. Sec. 5, Ch. 537, L. 1979, provided: "This act is effective on passage and approval." Approved April 11, 1979.

53-20-504. Powers and duties of department of institutions and department of social and rehabilitation services. The department of institutions and the department of social and rehabilitation services:

(1) may operate or contract with a nonprofit corporation that demonstrates expertise in and the capability of providing programs for the patient population to be served by the facility and for the operation and management of nursing homes;

(2) shall ensure that any state-owned nursing homes are in compliance with federal and state regulations;

(3) shall adopt rules for staffing requirements and the admission of patients;

(4) may accept grants, gifts, bequests, and contributions in money or property or any other form from individuals, corporations, associations, or federal, state, and local government agencies for the purposes of establishing and operating nursing homes.

History: **En. Sec. 2, Ch. 537, L. 1979.**

53-20-505. Disposition of facility. Nothing in 53-20-503 and 53-20-504 prohibits the disposition of the facility as provided in 77-2-302 if an appropriate use for the facility cannot be found by the department of institutions or the department of social and rehabilitation services.

History: **En. Sec. 3, Ch. 537, L. 1979.**

CHAPTER 21

MENTALLY ILL

Part 1 — Treatment of the Seriously Mentally Ill

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Part 1

Treatment of the Seriously Mentally Ill

53-21-101. Purpose. The purpose of this part is to:

(1) secure for each person who may be seriously mentally ill or suffering from a mental disorder such care and treatment as will be suited to the needs of the person and to insure that such care and treatment are skillfully

and humanely administered with full respect for the person's dignity and personal integrity;

(2) accomplish this goal whenever possible in a community-based setting;

(3) accomplish this goal in an institutionalized setting only when less restrictive alternatives are unavailable or inadequate and only when a person is so mentally ill as to require institutionalized care; and

(4) assure that due process of law is accorded any person coming under the provisions of this part.

History: En. 38-1301 by Sec. 1, Ch. 466, L. 1975; amd. Sec. 1, Ch. 546, L. 1977; R.C.M. 1947, 38-1301.

53-21-102. Definitions. As used in this part, the following definitions apply:

(1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(2) "Court" means any district court of the state of Montana.

(3) "Department" means the department of institutions provided for in Title 2, chapter 15, part 23.

(4) "Emergency situation" means a situation in which any person is in imminent danger of death or serious bodily harm from the activity of a person who appears to be seriously mentally ill.

(5) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions.

(6) "Mental health facility" or "facility" means a public hospital or a licensed private hospital which is equipped and staffed to provide treatment for persons with mental disorders or a community mental health center or any mental health clinic or treatment center approved by the department. No correctional institution or facility or jail is a mental health facility within the meaning of this part.

(7) "Next of kin" shall include but need not be limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(8) "Patient" means a person committed by the court for treatment for any period of time or who is voluntarily admitted for treatment for any period of time.

(9) "Peace officer" means any sheriff, deputy sheriff, marshal, policeman, or other peace officer.

(10) "Professional person" means:

(a) a medical doctor; or

(b) a person trained in the field of mental health and certified by the department in accordance with standards of professional licensing boards, federal regulations, and the joint commission on accreditation of hospitals.

(11) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional person.

(12) "Respondent" means a person alleged in a petition filed pursuant to this part to be seriously mentally ill.

(13) "Friend of respondent" means any person willing and able to assist a seriously mentally ill person or person alleged to be seriously mentally ill in dealing with legal proceedings, including consultation with legal counsel and others. The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, representatives of a charitable or religious

organization, or any other person appointed by the court to perform the functions of a friend of respondent set out in this part. Only one person may at any one time be the friend of respondent within the meaning of this part. In appointing a friend of respondent, the court shall consider the preference of the respondent. The court may at any time, for good cause shown, change its designation of the friend of respondent.

(14) "Seriously mentally ill" means suffering from a mental disorder which has resulted in self-inflicted injury or injury to others or the imminent threat thereof or which has deprived the person afflicted of the ability to protect his life or health. For this purpose, injury means physical injury. No person may be involuntarily committed to a mental health facility or detained for evaluation and treatment because he is an epileptic, mentally deficient, mentally retarded, senile, or suffering from a mental disorder unless the condition causes him to be seriously mentally ill within the meaning of this part.

(15) "State hospital" means the Warm Springs state hospital.

History: Ap. p. 38-1302 by Sec. 2, Ch. 466, L. 1975; amd. Sec. 9, Ch. 37, L. 1977; amd. Sec. 2, Ch. 546, L. 1977; Sec. 38-1302, R.C.M. 1947; (15)En. 38-106.1 by Sec. 3, Ch. 120, L. 1974; Sec. 38-106.1, R.C.M. 1947; R.C.M. 1947, 38-106.1, 38-1302; amd. Sec. 1, Ch. 547, L. 1979.

Compiler's Comments

Instructions to Code Commissioner. Sec. 14, Ch. 547, L. 1979, provided: "All references to 'responsible person' in Title 53, chapter 21, shall be changed to 'friend of respondent' by the code commissioner."

53-21-103. Court records to be kept separate. Records and papers in proceedings under this part shall be maintained separately by the clerks of the several courts. Five days prior to the release of a respondent or patient committed to a mental health facility, the facility shall notify the clerk of the court, and the clerk shall immediately seal the record in the case and omit the name of the respondent or patient from the index or indexes of cases in the court unless the court orders the record opened for good cause shown.

History: En. 38-1309 by Sec. 9, Ch. 466, L. 1975; amd. Sec. 9, Ch. 546, L. 1977; R.C.M. 1947, 38-1309(5); amd. Sec. 2, Ch. 547, L. 1979.

53-21-104. Powers and duties of mental disabilities board of visitors. (1) The board shall be an independent board of inquiry and review to assure that the treatment of all persons either voluntarily or involuntarily admitted to a mental facility is humane and decent and meets the requirements set forth in this part.

(2) The board shall review all plans for experimental research involving persons admitted to a mental health facility to assure that the research project is humane and not unduly hazardous and that it complies with the principles of the statement on the use of human subjects for research of the American association on mental deficiency and with the principles for research involving human subjects required by the United States department of health, education, and welfare. No experimental research project involving persons admitted to a mental health facility affected by this part may be commenced unless it is approved by the mental disabilities board of visitors.

(3) The board shall at least annually inspect every mental health facility which is providing treatment and evaluation to any person pursuant to this part. The board shall inspect the physical plant, including residential, recreational, dining, and sanitary facilities. It shall visit all wards and treatment

areas. The board shall inquire concerning all treatment programs being implemented by the facility.

(4) The board shall annually insure that a treatment plan exists and is being implemented for each patient admitted or committed to a mental health facility under this part. The board shall inquire concerning all use of restraints, isolation, or other extraordinary measures.

(5) The board may assist any patient at a mental health facility in resolving any grievance he may have concerning his commitment or his course of treatment in the facility.

(6) The board shall employ and be responsible for full-time legal counsel at the state hospital, whose responsibility shall be to act on behalf of all patients at the institution. The board shall insure that there is sufficient legal staff and facilities to insure availability to all patients and shall require that the appointed counsel periodically interview every patient and examine his files and records. The board may employ additional legal counsel for representation of patients in a similar manner at any other mental health facility having inpatient capability.

(7) If the board believes that any facility is failing to comply with the provisions of this part in regard to its physical facilities or its treatment of any patient, it shall report its findings at once to the professional person in charge of the facility and the director of the department, and if appropriate, after waiting a reasonable time for a response from such professional person, the board may notify the next of kin or guardian of any patient involved, the friend of respondent appointed by the court for any patient involved, and the district court which has jurisdiction over the facility.

(8) The board shall report annually to the governor and shall report to each session of the legislature concerning the status of the mental health facilities and treatment programs which it has inspected.

History: En. 38-1330 by Sec. 30, Ch. 466, L. 1975; amd. Sec. 16, Ch. 546, L. 1977; R.C.M. 1947, 38-1330(2) thru (9); amd. Sec. 14, Ch. 547, L. 1979.

53-21-105 through 53-21-110 reserved.

53-21-111. Voluntary admission. (1) Nothing in this part may be construed in any way as limiting the right of any person to make voluntary application for admission at any time to any mental health facility or professional person. An application for admission to a mental health facility shall be in writing on a form prescribed by the facility and approved by the department. It is not valid unless it is approved by a professional person and a copy is given to the person voluntarily admitting himself. A statement of the rights of the person voluntarily applying for admission, as set out in this part, including the right to release, shall be furnished to the patient within 12 hours.

(2) Any applicant who wishes to voluntarily apply for admission to the state hospital shall first obtain certification from a professional person that the applicant is suffering from a mental disorder and that the facilities available to the mental health region in which the applicant resides are unable to provide adequate evaluation and treatment, except such certification is not necessary if the applicant obtains certification from the regional mental health director of his mental health region that the applicant is financially

unable to receive evaluation and treatment from the facilities available to the mental health region.

(3) An application for voluntary admission shall give the facility the right to detain the applicant for no more than 5 days, excluding weekends and holidays, past his written request for release. A mental health facility may adopt rules providing for detention of the applicant for less than 5 days. The facility must notify all applicants of such rules and post such rules as provided in 53-21-168.

(4) Any person voluntarily entering or remaining in any mental health facility shall enjoy all the rights secured to a person involuntarily committed to the facility.

History: En. 38-1303 by Sec. 3, Ch. 466, L. 1975; amd. Sec. 3, Ch. 546, L. 1977; R.C.M. 1947, 38-1303(1) thru (3), (6); amd. Sec. 3, Ch. 547, L. 1979.

53-21-112. Voluntary admission of minors. (1) Notwithstanding any other provision of law, a minor who is 16 years of age or older may consent to receive mental health services to be rendered by a facility or a person licensed to practice medicine or psychology in this state.

(2) Except as provided by this section, the provisions of 53-21-111 apply to the voluntary admission of a minor to a mental health facility or the state hospital.

(3) Except as provided by this subsection, voluntary admission of a minor to a mental health facility for an inpatient course of treatment shall be for the same period of time as that for an adult. A minor voluntarily admitted shall have the right to be released within 5 days of his request as provided in 53-21-111(3). The minor himself may make such request. Unless there has been a periodic review and a voluntary readmission consented to by the minor patient and his counsel, voluntary admission terminates at the expiration of 1 year. Counsel shall be appointed for the minor at the minor's request or at any time he is faced with potential legal proceedings.

(4) If, in any application for voluntary admission for any period of time to a mental health facility, a minor fails to join in the consent of his parents or guardian to the voluntary admission, then the application for admission shall be treated as a petition for involuntary commitment. Notice of the substance of this subsection and of the right to counsel shall be set forth in conspicuous type in a conspicuous location on any form or application used for the voluntary admission of a minor to a mental health facility. The notice shall be explained to the minor.

History: En. 38-1303 by Sec. 3, Ch. 466, L. 1975; amd. Sec. 3, Ch. 546, L. 1977; R.C.M. 1947, 38-1303(7) thru (9); amd. Sec. 14, Ch. 38, L. 1979; amd. Sec. 4, Ch. 547, L. 1979.

53-21-113. Costs of committing a patient already voluntarily admitted — transportation costs for voluntary admission. (1) The cost of involuntarily committing a patient who is voluntarily admitted to a mental health facility at the time the involuntary proceedings are commenced shall be borne by the county of the patient's residence at the time of admission.

(2) The costs of transportation to a mental health facility under 53-21-111 and 53-21-112 shall be provided by the welfare department of the county of the patient's residence. However, if protective proceedings under Title 72, chapter 5, have been or are initiated with respect to the person, the

welfare department may seek reimbursement. If no one else is available to transport him, the sheriff shall transport the person.

History: En. 38-1303 by Sec. 3, Ch. 466, L. 1975; amd. Sec. 3, Ch. 546, L. 1977; R.C.M. 1947, 38-1303(4), (5).

53-21-114. Notice of rights to be given. (1) Whenever a person is involuntarily detained or is examined pursuant to 53-21-121 through 53-21-126, the person shall be informed of his constitutional rights and his rights under this part.

(2) Every respondent subject to an order for short-term treatment or long-term care and treatment shall be advised of his right to appeal the order by the court at the conclusion of any hearing the result of which such an order may be entered.

History: (1)En. 38-1304 by Sec. 4, Ch. 466, L. 1975; amd. Sec. 4, Ch. 546, L. 1977; Sec. 38-1304, R.C.M. 1947; (2)En. 38-1309 by Sec. 9, Ch. 466, L. 1975; amd. Sec. 9, Ch. 546, L. 1977; Sec. 38-1304, R.C.M. 1947; R.C.M. 1947, 38-1304(part), 38-1309(4).

53-21-115. Procedural rights. In addition to any other rights which may be guaranteed by the constitution of the United States and of this state, by the laws of this state, or by this part, any person who is involuntarily detained or against whom a petition is filed pursuant to this part has the following rights:

(1) the right to notice reasonably in advance of any hearing or other court proceeding concerning him;

(2) the right in any hearing to be present, to offer evidence, and to present witnesses in any proceeding concerning him;

(3) the right in any hearing to cross-examine witnesses;

(4) the right to be represented by counsel;

(5) the right to remain silent;

(6) the right in any hearing to be proceeded against according to the rules of evidence applicable to civil matters generally;

(7) the right to view and copy all petitions on file with the court concerning him;

(8) the right to be examined by a professional person of his choice when such professional person is willing and reasonably available;

(9) the right to be dressed in his own clothes at any hearing held pursuant to this part; and

(10) the right to refuse any but lifesaving medication for up to 24 hours prior to any hearing held pursuant to this part.

History: En. 38-1304 by Sec. 4, Ch. 466, L. 1975; amd. Sec. 4, Ch. 546, L. 1977; R.C.M. 1947, 38-1304(4); amd. Sec. 5, Ch. 547, L. 1979.

53-21-116. Right to be present at hearing or trial — appointment of counsel. The person alleged to be seriously mentally ill has the right to be present at any hearing or trial. If he has no attorney, the judge shall appoint one to represent him at either the hearing or the trial, or both, who shall be compensated from the public funds of the county where the respondent resides.

History: En. 38-1309 by Sec. 9, Ch. 466, L. 1975; amd. Sec. 9, Ch. 546, L. 1977; R.C.M. 1947, 38-1309(part).

53-21-117. Right to representation by own attorney. The respondent or the friend of respondent appointed by the court may secure an attorney of his own choice and at his own expense to represent the respondent.

History: En. 38-1309 by Sec. 9, Ch. 466, L. 1975; amd. Sec. 9, Ch. 546, L. 1977; R.C.M. 1947, 38-1309(part); amd. Sec. 14, Ch. 547, L. 1979.

53-21-118. Right to examination by professional person of own choosing. (1) The respondent, his attorney, or the friend of respondent appointed by the court may secure a professional person of his own choice to examine the respondent and to testify at the hearing before the court or jury as to the results of his examination.

(2) If the person wishing to secure the testimony of a professional person is unable to do so because of financial reasons and if the respondent joins in the request for the examination, the court shall appoint a professional person other than the professional person requesting the commitment to perform the examination. Whenever possible, the court shall allow the respondent a reasonable choice of an available professional person qualified to perform the requested examination who will be compensated from the public funds of the county where the respondent resides.

History: En. 38-1309 by Sec. 9, Ch. 466, L. 1975; amd. Sec. 9, Ch. 546, L. 1977; R.C.M. 1947, 38-1309(part); amd. Sec. 14, Ch. 547, L. 1979.

53-21-119. Waiver of rights. (1) A person may waive his rights, or if the person is not capable of making an intentional and knowing decision, these rights may be waived by his counsel and friend of respondent acting together if a record is made of the reasons for the waiver. The right to counsel may not be waived. The right to treatment provided for in this part may not be waived.

(2) The right of the respondent to be physically present at a hearing may also be waived by his attorney and the friend of respondent with the concurrence of the professional person and the judge upon a finding supported by facts that:

(a) the presence of the respondent at the hearing would be likely to seriously adversely affect his mental condition; and

(b) an alternative location for the hearing in surroundings familiar to the respondent would not prevent such adverse effects on his mental condition.

(3) (a) In the case of a minor, provided that a record is made of the reasons for the waiver, his rights may be waived by the mutual consent of his counsel and parents or guardian or guardian ad litem if there are no parents or guardian.

(b) If there is an apparent conflict of interest between a minor and his parents or guardian, the court shall appoint a guardian ad litem for him.

History: En. 38-1304 by Sec. 4, Ch. 466, L. 1975; amd. Sec. 4, Ch. 546, L. 1977; R.C.M. 1947, 38-1304(part); amd. Secs. 6, 14, Ch. 547, L. 1979.

53-21-120. Detention to be in least restrictive environment — preference for mental health facility — court relief. (1) A person detained pursuant to this part shall be detained in the least restrictive environment required to protect the life and physical safety of the person detained or members of the public; in this respect, prevention of significant injury to property may be considered.

(2) Whenever possible, a person detained pursuant to this part shall be detained in a mental health facility and in the county of residence. If the person detained demands a jury trial and trial cannot be held within 7 days, the individual may be sent to the state hospital until time of trial if arrangements can be made to return him to trial. Such trial must be held within 30 days. The county of residence shall pay the cost of travel and professional services associated with the trial. No person may be detained in any hospital or other medical facility which is not a mental health facility unless such hospital or facility has agreed in writing to admit the person.

(3) A person may be detained in a jail or other correctional facility only if no mental health facility is available or if the available mental health facilities are inadequate to protect the person detained and the public. As soon as a mental health facility becomes available or the situation has changed sufficiently that an available mental health facility is adequate for the protection of the person detained and the public, then the detained person shall be transferred from the jail or correctional facility to the mental health facility.

(4) A person detained prior to involuntary commitment may apply to the court for immediate relief with respect to the need for detention or the adequacy of the facility being utilized to detain.

History: En. 38-1304 by Sec. 4, Ch. 466, L. 1975; amd. Sec. 4, Ch. 546, L. 1977; R.C.M. 1947, 38-1304(5); amd. Sec. 7, Ch. 547, L. 1979.

53-21-121. Petition for commitment — contents of — notice of. (1) The county attorney, upon the written request of any person, may file a petition with the court alleging that there is a person within the county who is seriously mentally ill and requesting that the person be committed to a mental health facility for a period of no more than 3 months.

(2) The petition shall contain:

(a) the name and address of the person requesting the petition and his interest in the case;

(b) the name of the respondent and, if known, the address, age, sex, marital status, and occupation of the respondent;

(c) the purported facts supporting the allegation of mental illness;

(d) the name and address of every person known or believed to be legally responsible for the care, support, and maintenance of the person for whom evaluation is sought;

(e) the name and address of the person's next of kin to the extent known to the county attorney and the person requesting the petition;

(f) the name and address of any person whom the county attorney believes might be willing and able to be appointed as friend of respondent;

(g) the name, address, and telephone number of the attorney, if any, who has most recently represented the person for whom evaluation is sought; if there is no attorney, there shall be a statement as to whether to the best knowledge of the person requesting the petition the person for whom evaluation is sought is indigent and therefore unable to afford the services of an attorney; and

(h) a statement of the rights of the respondent which shall be in conspicuous print and identified by a suitable heading.

(3) Notice of the petition shall be hand-delivered to the respondent and to his counsel on or before the initial appearance of the respondent before

the judge or justice of the peace. Notice of the petition and the order setting the date and time of the hearing and the names of the respondent's counsel, professional person, and friend of respondent shall be hand-delivered or mailed to the person or persons legally responsible for care, support, and maintenance of the respondent, the next of kin identified in the petition, and any other person identified by the county attorney as a possible friend of respondent other than the one named as the friend of respondent. The notice may provide, other than as to the respondent and his counsel, that no further notice will be given unless written request is filed with the clerk of court.

History: En. 38-1305 by Sec. 5, Ch. 466, L. 1975; amd. Sec. 5, Ch. 546, L. 1977; R.C.M. 1947, 38-1305(part); amd. Sec. 14, Ch. 547, L. 1979.

53-21-122. Petition for commitment — filing of — initial hearing on. (1) The petition shall be filed with the clerk of court who shall immediately notify the judge.

(2) If a judge is available, he shall consider the petition, and if he finds no probable cause, it shall be dismissed. If the judge finds probable cause, counsel shall be immediately appointed for the respondent, and the respondent shall be brought forthwith before the court with his counsel. The respondent shall be advised of his constitutional rights, his rights under this part, and the substantive effect of the petition. The respondent may at this appearance object to the finding of probable cause for filing the petition. The judge shall appoint a professional person and a friend of respondent and set a date and time for the hearing on the petition, which may not exceed 5 days, including weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent. The desires of the respondent shall be taken into consideration in the appointment of the friend of respondent and in the confirmation of the appointment of the attorney.

(3) If a judge is not available in the county, the clerk shall notify a resident judge by telephone and read the petition to him. If the judge finds no probable cause, the petition shall be dismissed. If the judge finds probable cause, he shall cause the clerk to issue an order appointing counsel and a professional person and setting a date and time for the hearing on the petition, which may not exceed 5 days, including weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent. The order shall also direct that the respondent be brought forthwith before a justice of the peace with his counsel to be advised of his constitutional rights, his rights under this part, and the contents of the clerk's order, as well as to furnish him with a copy. The justice of the peace shall ascertain the desires of the respondent with respect to the appointment of his counsel, and this shall be immediately communicated to the resident judge. The resident judge may appoint other counsel, may confer with respondent's counsel and the county attorney in order to appoint a friend of respondent, and may do all things necessary through the clerk of court by telephone as if the resident judge were personally present.

History: En. 38-1305 by Sec. 5, Ch. 466, L. 1975; amd. Sec. 5, Ch. 546, L. 1977; R.C.M. 1947, 38-1305(3); amd. Sec. 14, Ch. 547, L. 1979.

53-21-123. Examination of respondent following initial hearing — recommendation of professional person. (1) Following the initial hearing, whether before a judge or justice of the peace, the respondent shall be examined by the professional person without unreasonable delay. The examination may not exceed a period of 4 hours. The professional person shall immediately notify the county attorney of his findings in person or by phone and shall make a written report of his examination to the court, with copies to the respondent's attorney and the county attorney.

(2) The following action shall be taken based on the professional person's findings:

(a) If he recommends dismissal, he shall additionally notify counsel and the respondent shall be released and the petition dismissed. However, the county attorney may, upon good cause shown, request the court to order an additional, but no more than one, examination by a different professional person for a period of no more than 4 hours.

(b) If he finds that commitment proceedings should continue, the hearing shall be held as scheduled.

(3) The court may not order further evaluation pending the hearing unless sound medical reasons require additional time for a complete evaluation. Such reasons shall be set forth in the order, along with the amount of additional time needed.

History: En. 38-1305 by Sec. 5, Ch. 466, L. 1975; amd. Sec. 5, Ch. 546, L. 1977; R.C.M. 1947, 38-1305(4).

53-21-124. Detention of respondent pending hearing or trial. The court may not order detention of respondent pending the hearing unless requested by the county attorney and upon the existence of probable cause for detention. Counsel shall be orally notified immediately. Counsel for the respondent may then request a detention hearing, which shall be held forthwith. In the event of detention, the respondent shall be detained in the least restrictive setting necessary to assure his presence and assure his safety and the safety of others as provided in 53-21-120. He shall have the right to be examined additionally by a professional person of his choice. Unless objection is made by counsel for the respondent, he shall continue to be evaluated and treated by the professional person pending the hearing.

History: En. 38-1305 by Sec. 5, Ch. 466, L. 1975; amd. Sec. 5, Ch. 546, L. 1977; R.C.M. 1947, 38-1305(5).

53-21-125. Request for jury trial. At any time prior to the date set for hearing, the respondent, through his counsel, may request a jury trial, whereupon the time set for hearing shall be vacated and the matter set on the court's jury calendar at the earliest date possible, the matter taking precedence over all other matters. If there is not a jury in attendance, a jury shall be selected in the manner provided in 3-15-506 and a date set for trial by jury not later than 7 days, exclusive of Saturdays, Sundays, and holidays.

History: En. 38-1305 by Sec. 5, Ch. 466, L. 1975; amd. Sec. 5, Ch. 546, L. 1977; R.C.M. 1947, 38-1305(part).

53-21-126. Trial or hearing on petition. (1) The respondent shall be present unless his presence has been waived as provided in 53-21-119(2), and he shall be represented by counsel at all stages of the trial. The trial shall be limited to the determination of whether or not the respondent is seriously mentally ill within the meaning set forth in this part.

(2) The standard of proof in any hearing held pursuant to this section is proof beyond a reasonable doubt with respect to any physical facts or evidence and clear and convincing evidence as to all other matters, except that mental disorders shall be evidenced to a reasonable medical certainty. Imminent threat of self-inflicted injury or injury to others shall be evidenced by overt acts, sufficiently recent in time as to be material and relevant as to the respondent's present condition.

(3) The professional person appointed by the court shall be present for the trial and subject to cross-examination. The trial shall be governed by the Montana Rules of Civil Procedure except that, if tried by a jury, at least two-thirds of the jurors must concur on a finding that the respondent is seriously mentally ill. The written report of the professional person that indicates the professional person's diagnosis may be attached to the petition, but any matter otherwise inadmissible, such as hearsay matter, is not admissible merely because it is contained in the report. The court may order the trial closed to the public for the protection of the respondent.

(4) The professional person may testify as to the ultimate issue of whether the respondent is seriously mentally ill. This testimony is insufficient unless accompanied by evidence from the professional person or others that:

(a) the respondent is suffering from a mental disorder; and

(b) the mental disorder has resulted in self-inflicted injury or injury to others or the imminent threat thereof or has deprived the person afflicted of the ability to protect his life or health.

(5) The court, upon the showing of good cause and when it is in the best interests of the respondent, may order a change of venue.

History: En. 38-1305 by Sec. 5, Ch. 466, L. 1975; amd. Sec. 5, Ch. 546, L. 1977; R.C.M. 1947, 38-1305(part); amd. Sec. 8, Ch. 547, L. 1979.

53-21-127. Posttrial disposition. (1) If, upon trial, it is determined that the respondent is not seriously mentally ill within the meaning of this part, he shall be discharged and the petition dismissed.

(2) (a) If it is determined that the respondent is seriously mentally ill within the meaning of this part, the court shall hold a posttrial disposition hearing. The disposition hearing shall be held within 5 days (including Saturdays, Sundays, and holidays unless the fifth day falls on a Saturday, Sunday, or holiday), during which time the court may order further evaluation and treatment of the respondent. At the conclusion of the disposition hearing, the court shall:

(i) commit the respondent to a facility for a period of not more than 3 months;

(ii) order the respondent to be placed in the care and custody of his relative or guardian or some other appropriate place other than an institution;

(iii) order outpatient therapy; or

(iv) make some other appropriate order for treatment.

(b) No treatment ordered pursuant to this subsection may affect the respondent's custody for a period of more than 3 months.

(c) In determining which of the above alternatives to order, the court shall choose the least restrictive alternatives necessary to protect the respondent and the public and to permit effective treatment. The court shall consider and shall describe in its order what alternatives for treatment of the respondent are available, what alternatives were investigated, and why the investigated alternatives were not deemed suitable. The court shall enter into the record a detailed statement of the facts upon which it found the respondent to be seriously mentally ill.

History: En. 38-1305, 38-1306 by Secs. 5, 6, Ch. 466, L. 1975; amd. Secs. 5, 6, Ch. 546, L. 1977; R.C.M. 1947, 38-1305(part), 38-1306(1); amd. Sec. 9, Ch. 547, L. 1979.

53-21-128. Petition for extension of commitment period. (1) (a) Not less than 2 calendar weeks prior to the end of the 3-month period of detention provided for in 53-21-127(2), the professional person in charge of the patient at the place of detention may petition the court for extension of the detention period. The petition shall be accompanied by a written report and evaluation of the patient's mental and physical condition. The report shall describe any tests and evaluation devices which have been employed in evaluating the patient, the course of treatment which has been undertaken for the patient, and the future course of treatment anticipated by the professional person.

(b) Upon the filing of the petition, the court shall give written notice of the filing of the petition to the patient, his next of kin, if reasonably available, the friend of respondent appointed by the court, and the patient's counsel. If any person so notified requests a hearing prior to the termination of the previous detention authority, the court shall immediately set a time and place for a hearing on a date not more than 10 days from the receipt of the request and notify the same people, including the professional person in charge of the patient. If a hearing is not requested, the court shall enter an order of commitment for a period not to exceed 6 months.

(c) Procedure on the petition for extension when a hearing has been requested shall be the same in all respects as the procedure on the petition for the original 3-month commitment except the patient is not entitled to trial by jury. The hearing shall be held in the district court having jurisdiction over the facility in which the patient is detained unless otherwise ordered by the court. Court costs and witness fees, if any, shall be paid by the county that paid the same costs in the initial commitment proceedings.

(d) If upon the hearing the court finds the patient not seriously mentally ill within the meaning of this part, he shall be discharged and the petition dismissed. If the court finds that the patient continues to suffer from serious mental illness, the court shall order commitment, custody in relatives, outpatient therapy, or other order as set forth in 53-21-127(2) except that no order may affect his custody for more than 6 months. In its order, the court shall describe what alternatives for treatment of the patient are available, what alternatives were investigated, and why the investigated alternatives were not deemed suitable. The court shall not order continuation of an alternative which does not include a comprehensive, individualized plan of treatment for the patient. A court order for the continuation of an alternative shall include a specific finding that a comprehensive, individualized plan of treatment exists.

(2) Further extensions may be obtained under the same procedure described in subsection (1) of this section except that the patient's custody

may not be affected for more than 1 year without a renewal of the commitment under the procedures set forth in subsection (1) of this section, including a statement of the findings required by subsection (1).

History: **En. 38-1306 by Sec. 6, Ch. 466, L. 1975; amd. Sec. 6, Ch. 546, L. 1977; R.C.M. 1947, 38-1306(3), (4); amd. Secs. 10, 14, Ch. 547, L. 1979.**

53-21-129. Emergency situation — petition — detention. (1) When an emergency situation exists, a peace officer may take any person who appears to be seriously mentally ill and as a result of serious mental illness to be a danger to others or to himself into custody only for sufficient time to contact a professional person for emergency evaluation. If possible, a professional person should be called prior to taking the person into custody.

(2) If the professional person agrees that the person detained appears to be seriously mentally ill and that an emergency situation exists, then the person may be detained and treated until the next regular business day. At that time, the professional person shall release the detained person or file his findings with the county attorney who, if he determines probable cause to exist, shall file the petition provided for in 53-21-121 through 53-21-126 in the county of the respondent's residence. In either case, the professional person shall file a report with the court explaining his actions.

(3) The county attorney of any county may make arrangements with any federal, state, regional, or private mental facility or with a mental health facility in any county for the detention of persons held pursuant to this section.

History: **En. 38-1307 by Sec. 7, Ch. 466, L. 1975; amd. Sec. 7, Ch. 546, L. 1977; R.C.M. 1947, 38-1307.**

53-21-130. Transfer or commitment to mental health facility from other institutions. No person who is in the custody of the department for any purpose other than treatment of severe mental illness may be transferred or committed to a mental health facility for more than 10 days unless the transfer or commitment is effected according to the procedures set out in this part. However, proceedings for involuntary commitment may be commenced in the county of the mental health facility where the person is, in the county of the institution from which the person was transferred to the mental health facility, or in the county of the person's residence. Notice of a transfer shall be given immediately to any assigned counsel at the mental health facility and to the parents of minors, guardians, friends of respondent, or conservators, as the case may be.

History: **En. 38-1310 by Sec. 10, Ch. 466, L. 1975; amd. Sec. 10, Ch. 546, L. 1977; R.C.M. 1947, 38-1310; amd. Sec. 14, Ch. 547, L. 1979.**

53-21-131. Appeal procedure. Appellate review of any order of short-term evaluation and treatment or long-term commitment may be had by appeal to the supreme court of Montana in the manner as other civil cases. The patient shall not be released pending appeal unless ordered by the court. The appeal shall have priority above all other matters before the supreme court.

History: **En. 38-1311 by Sec. 11, Ch. 466, L. 1975; R.C.M. 1947, 38-1311.**

53-21-132. Cost of examination and commitment. (1) The cost of the examination, committal, and taking a person who is seriously mentally ill to a mental health facility must be paid by the county in which he resides at the time he is adjudged to be seriously mentally ill. The sheriff must be allowed the actual expenses incurred in taking a person who is seriously mentally ill to the facility, as provided by 7-32-2144.

(2) The county of residence shall also pay all precommitment expenses, including transportation to a mental health facility, incurred in connection with the detention, examination, and precommitment custody of the respondent. The fact that a person is examined, hospitalized, or receives medical, psychological, or other mental health treatment pursuant to this part does not relieve a third party from a contractual obligation to pay for the cost of the examination, hospitalization, or treatment.

History: (1)En. Sec. 2311, Pol. C. 1895; re-en. Sec. 1145, Rev. C. 1907; re-en. Sec. 1442, R.C.M. 1921; Cal Pol. C. Sec. 2175; re-en. Sec. 1442, R.C.M. 1935; amd. Sec. 33, Ch. 466, L. 1975; Sec. 38-212, R.C.M. 1947; (2)En. 38-1309 by Sec. 9, Ch. 466, L. 1975; amd. Sec. 9, Ch. 546, L. 1977; Sec. 38-1309, R.C.M. 1947; R.C.M. 1947, 38-212, 38-1309(part).

53-21-133. Transfer to nonstate facilities. (1) If a person is committed under the provisions of this part and is eligible for hospital care or treatment by an agency of the United States and if a certificate of notification from such agency showing that facilities are available and that the person is eligible for care or treatment therein is received, the court may order the person to be placed in the custody of the agency for hospitalization. The chief officer of any hospital or institution operated by such an agency and in which a person is so hospitalized shall be vested with the same powers as the superintendent of the state hospital with respect to detention, custody, transfer, conditional release, or discharge of the person. Jurisdiction shall be retained in the appropriate courts of this state to inquire into the mental condition of persons so hospitalized and to determine the necessity for continuance of their hospitalization.

(2) Consistent with other provisions of this part, a person committed under this part for a period of 3 months or longer may be committed by the court to the custody of friends or next of kin residing outside the state or to a mental health facility located outside the state if the out-of-state facility agrees to receive the patient. No such commitment shall be for a longer period of time than is permitted within the state. If the patient is indigent, the expense of supporting him in an out-of-state facility and the expense of transportation shall be borne by the state of Montana.

(3) The transfer out of Montana of persons committed under the provisions of this part or into Montana under the laws of another jurisdiction shall be governed by the provisions of the Interstate Compact on Mental Health.

History: En. 38-1314 by Sec. 14, Ch. 466, L. 1975; R.C.M. 1947, 38-1314.

53-21-134. Receipt of seriously mentally ill nonresident person pending return to home state. A person who is seriously mentally ill and not a resident of this state may be received into the state hospital for a period not to exceed 30 days pending return to the state of his residence.

History: En. Sec. 1, Ch. 198, L. 1963; amd. Sec. 8, Ch. 120, L. 1974; amd. Sec. 2, Ch. 37, L. 1977; R.C.M. 1947, 38-120.

53-21-135 through 53-21-140 reserved.

53-21-141. Civil and legal rights of person committed. (1) Unless specifically stated in an order by the court, a person involuntarily committed to a facility for a period of evaluation or treatment does not forfeit any legal right or suffer any legal disability by reason of the provisions of this part except insofar as it may be necessary to detain the person for treatment, evaluation, or care. All communication between an alleged mentally ill person and a professional person is privileged under normal privileged communication rules unless it is clearly explained to the person in advance that the purpose of an interview is for evaluation and not treatment.

(2) Whenever a person is committed to a mental health facility for a period of 3 months or longer, the court ordering the commitment may make an order stating specifically any legal rights which are denied the respondent and any legal disabilities which are imposed on him. As part of its order, the court may appoint a person to act as conservator of the respondent's property. Any conservatorship created pursuant to this section terminates upon the conclusion of the involuntary commitment if not sooner terminated by the court. A conservatorship or guardianship extending beyond the period of involuntary commitment may not be created except according to the procedures set forth under Montana law for the appointment of conservators and guardians generally.

(3) A person who has been committed to a mental health facility pursuant to this part is automatically restored upon the termination of the commitment to all of his civil and legal rights which may have been lost when he was committed. This subsection does not affect, however, a guardianship or conservatorship created independently of the commitment proceedings according to the provisions of Montana law relating to the appointment of conservators and guardians generally. A person who leaves a mental health facility following a period of evaluation and treatment shall be given a written statement setting forth the substance of this subsection.

(4) A person committed to a mental health facility prior to July 1, 1975, enjoys all the rights and privileges of a person committed after that date.

History: En. 38-1313 by Sec. 13, Ch. 466, L. 1975; amd. Sec. 11, Ch. 546, L. 1977; R.C.M. 1947, 38-1313(1) thru (4); amd. Sec. 11, Ch. 547, L. 1979.

53-21-142. Rights of persons admitted to facility. Patients admitted to a mental health facility, whether voluntarily or involuntarily, shall have the following rights:

(1) Patients have a right to privacy and dignity.

(2) Patients have a right to the least restrictive conditions necessary to achieve the purposes of commitment.

(3) Patients shall have the same rights to visitation and reasonable access to private telephone communications as patients at any public hospitals except to the extent that the professional person responsible for formulation of a particular patient's treatment plan writes an order imposing special restrictions. The written order must be renewed after each periodic review of the treatment plan if any restrictions are to be continued. Patients shall have an unrestricted right to visitation with attorneys, with spiritual counselors, and with private physicians and other professional persons.

(4) Patients shall have an unrestricted right to send sealed mail. Patients shall have an unrestricted right to receive sealed mail from their attorneys, private physicians and other professional persons, the mental disabilities board of visitors, courts, and government officials. Patients shall have a right to receive sealed mail from others except to the extent that a professional person responsible for formulation of a particular patient's treatment plan writes an order imposing special restrictions on receipt of sealed mail. The written order must be renewed after each periodic review of the treatment plan if any restrictions are to be continued.

(5) Patients have an unrestricted right to have access to letter-writing materials, including postage, and have a right to have staff members of the facility assist persons who are unable to write, prepare, and mail correspondence.

(6) Patients have a right to wear their own clothes and to keep and use their own personal possessions, including toilet articles, except insofar as such clothes or personal possessions may be determined by a professional person in charge of the patient's treatment plan to be dangerous or otherwise inappropriate to the treatment regimen. The facility has an obligation to supply an adequate allowance of clothing to any patients who do not have suitable clothing of their own. Patients shall have the opportunity to select from various types of neat, clean, and seasonable clothing. Such clothing shall be considered the patient's throughout his stay at the facility. The facility shall make provision for the laundering of patient clothing.

(7) Patients have the right to keep and be allowed to spend a reasonable sum of their own money.

(8) Patients have the right to religious worship. Provisions for such worship shall be made available to all patients on a nondiscriminatory basis. No individual shall be required to engage in any religious activities.

(9) Patients have a right to regular physical exercise several times a week. Moreover, it shall be the duty of the facility to provide facilities and equipment for such exercise. Patients have a right to be outdoors at regular and frequent intervals in the absence of contrary medical considerations.

(10) Patients have the right to be provided, with adequate supervision, suitable opportunities for interaction with members of the opposite sex except to the extent that a professional person in charge of the patient's treatment plan writes an order stating that such interaction is inappropriate to the treatment regimen.

(11) Patients have a right to receive prompt and adequate medical treatment for any physical ailments. In providing medical care, the mental health facility shall take advantage of whatever community-based facilities are appropriate and available and shall coordinate the patient's treatment for mental illness with his medical treatment.

(12) Patients have a right to a diet that will provide at a minimum the recommended daily dietary allowances as developed by the national academy of sciences. Provisions shall be made for special therapeutic diets and for substitutes at the request of the patient or the friend of respondent in accordance with the religious requirements of any patient's faith. Denial of a nutritionally adequate diet shall not be used as punishment.

(13) Patients have a right to a humane psychological and physical environment within the mental health facilities. These facilities shall be designed to

afford patients with comfort and safety, promote dignity, and ensure privacy. The facilities shall be designed to make a positive contribution to the efficient attainment of the treatment goals set for the patient. In order to assure the accomplishment of this goal:

(a) regular housekeeping and maintenance procedures which will ensure that the facility is maintained in a safe, clean, and attractive condition shall be developed and implemented;

(b) there must be special provision made for geriatric and other nonambulatory patients to assure their safety and comfort, including special fittings on toilets and wheelchairs. Appropriate provision shall be made to permit nonambulatory patients to communicate their needs to the facility staff.

(c) pursuant to an established routine maintenance and repair program, the physical plant of every facility shall be kept in a continuous state of good repair and operation in accordance with the needs of the health, comfort, safety, and well-being of the patients;

(d) every facility must meet all fire and safety standards established by the state and locality. In addition, any hospital shall meet such provisions of the life safety code of the national fire protection association as are applicable to hospitals. Any hospital shall meet all standards established by the state for general hospitals insofar as they are relevant to psychiatric facilities.

History: En. 38-1317 by Sec. 17, Ch. 466, L. 1975; R.C.M. 1947, 38-1317; amd. Sec. 14, Ch. 547, L. 1979.

53-21-143. Right not to be fingerprinted. No person admitted to or in a mental health facility shall be fingerprinted unless required by other provisions of law.

History: En. 38-1315 by Sec. 15, Ch. 466, L. 1975; R.C.M. 1947, 38-1315.

53-21-144. Rights concerning photographs. (1) A person admitted to a mental health facility may be photographed upon admission for identification and the administrative purposes of the facility. Such photographs shall be confidential and shall not be released by the facility except pursuant to court order.

(2) No other nonmedical photographs shall be taken or used without consent of the patient's legal guardian or the friend of respondent appointed by the court.

History: En. 38-1316 by Sec. 16, Ch. 466, L. 1975; R.C.M. 1947, 38-1316; amd. Sec. 14, Ch. 547, L. 1979.

53-21-145. Right to be free from unnecessary or excessive medication. Patients have a right to be free from unnecessary or excessive medication. No medication shall be administered unless at the written order of a physician. The attending physician shall be responsible for all medication given or administered to a patient. The use of medication shall not exceed standards of use that are advocated by the United States food and drug administration. Notation of each individual's medication shall be kept in his medical records. At least weekly, an attending physician shall review the drug regimen of each patient under his care. Except in the case of outpatients, all prescriptions shall be written with a termination date, which shall not exceed 30 days. Medication shall not be used as punishment, for the convenience of staff, as a substitute for a treatment program, or in quantities that interfere with the patient's treatment program.

History: **En. 38-1319 by Sec. 19, Ch. 466, L. 1975; R.C.M. 1947, 38-1319.**

53-21-146. Right to be free from physical restraint and isolation. Patients have a right to be free from physical restraint and isolation. Except for emergency situations in which it is likely that patients could harm themselves or others and in which less restrictive means of restraint are not feasible, patients may be physically restrained or placed in isolation only on a professional person's written order which explains the rationale for such action. The written order may be entered only after the professional person has personally seen the patient concerned and evaluated whatever episode or situation is said to call for restraint or isolation. Emergency use of restraints or isolation shall be for no more than 1 hour, by which time a professional person shall have been consulted and shall have entered an appropriate order in writing. Such written order shall be effective for no more than 24 hours and must be renewed if restraint and isolation are to be continued. Whenever a patient is subject to restraint or isolation, adequate care shall be taken to monitor his physical and psychiatric condition and to provide for his physical needs and comfort.

History: **En. 38-1320 by Sec. 20, Ch. 466, L. 1975; R.C.M. 1947, 38-1320.**

53-21-147. Right not to be subjected to experimental research. (1) Patients shall have a right not to be subjected to experimental research without the express and informed consent of the patient, if the patient is able to give such consent, and of his guardian, if any, and the friend of respondent appointed by the court after opportunities for consultation with independent specialists and with legal counsel. If there is no friend of respondent or if the friend of respondent appointed by the court is no longer available, then a friend of respondent who is in no way connected with the facility, the department, or the research project shall be appointed prior to the involvement of the patient in any experimental research. At least 10 days prior to the commencement of such experimental research, the facility shall send notice of intent to involve the patient in experimental research to the patient, his next of kin, if known, his legal guardian, if any, the attorney who most recently represented him, and the friend of respondent appointed by the court.

(2) Such proposed research shall first have been reviewed and approved by the mental disabilities board of visitors before such consent shall be sought. Prior to such approval, the board shall determine that such research complies with the principles of the statement on the use of human subjects for research of the American association on mental deficiency and with the principles for research involving human subjects required by the United States department of health, education, and welfare for projects supported by that agency.

History: **En. 38-1321 by Sec. 21, Ch. 466, L. 1975; R.C.M. 1947, 38-1321; amd. Sec. 14, Ch. 547, L. 1979.**

53-21-148. Right not to be subjected to hazardous treatment. Patients have a right not to be subjected to treatment procedures such as lobotomy, adversive reinforcement conditioning, or other unusual or hazardous treatment procedures without their express and informed consent after consultation with counsel, the legal guardian, if any, the friend of respondent appointed by the court, and any other interested party of the patient's choice. At least one of those consulted must consent to the treatment, along with the patient's counsel. If there is no friend of respondent or if the friend of respondent appointed by the court is no longer available, then a friend of respondent who is in no way connected with the facility or with the department shall be appointed before any such treatment procedure can be employed. At least 10 days prior to the commencement of the extraordinary treatment program, the facility shall send notice of intent to employ extraordinary treatment procedures to the patient, his next of kin, if known, the legal guardian, if any, the attorney who most recently represented him, and the friend of respondent appointed by the court.

History: En. 38-1322 by Sec. 22, Ch. 466, L. 1975; amd. Sec. 12, Ch. 546, L. 1977; R.C.M. 1947, 38-1322; amd. Sec. 14, Ch. 547, L. 1979.

53-21-149 through 53-21-160 reserved.

53-21-161. Qualifications of professional persons. In every mental health facility to which a person is admitted pursuant to this part:

(1) each professional person and other staff member employed by the facility shall meet all certification requirements promulgated by the department;

(2) all nonprofessional staff members who have not had prior clinical experience in a mental institution shall have substantial orientation training;

(3) staff members on all levels shall have regularly scheduled in-service training;

(4) each nonprofessional staff member shall be under the direct supervision of a professional person.

History: En. 38-1323 by Sec. 23, Ch. 466, L. 1975; R.C.M. 1947, 38-1323.

53-21-162. Establishment of patient treatment plan. (1) Each patient admitted as an inpatient to a mental health facility shall have a comprehensive physical and mental examination and review of behavioral status within 48 hours after admission to the mental health facility.

(2) Each patient shall have an individualized treatment plan. This plan shall be developed by appropriate professional persons, including a psychiatrist, and shall be implemented no later than 10 days after the patient's admission. Each individualized treatment plan shall contain:

(a) a statement of the nature of the specific problems and specific needs of the patient;

(b) a statement of the least restrictive treatment conditions necessary to achieve the purposes of commitment;

(c) a description of intermediate and long-range treatment goals, with a projected timetable for their attainment;

(d) a statement and rationale for the plan of treatment for achieving these intermediate and long-range goals;

(e) a specification of staff responsibility and a description of proposed staff involvement with the patient in order to attain these treatment goals;

(f) criteria for release to less restrictive treatment conditions and criteria for discharge; and

(g) a notation of any therapeutic tasks and labor to be performed by the patient.

(3) As part of his treatment plan, each patient shall have an individualized after-care plan. This plan shall be developed by a professional person as soon as practicable after the patient's admission to the facility.

(4) In the interests of continuity of care, whenever possible one professional person (who need not have been involved with the development of the treatment plan) shall be responsible for supervising the implementation of the treatment plan, integrating the various aspects of the treatment program, and recording the patient's progress. This professional person shall also be responsible for ensuring that the patient is released, where appropriate, into a less restrictive form of treatment.

(5) The treatment plan shall be continuously reviewed by the professional person responsible for supervising the implementation of the plan and shall be modified if necessary. Moreover, at least every 90 days each patient shall receive a mental examination from and his treatment plan shall be reviewed by a professional person other than the professional person responsible for supervising the implementation of the plan.

History: En. 38-1324 by Sec. 24, Ch. 466, L. 1975; amd. Sec. 13, Ch. 546, L. 1977; R.C.M. 1947, 38-1324.

53-21-163. Examination following commitment. No later than 30 days after a patient is committed to a mental health facility, the professional person in charge of the facility or his appointed, professionally qualified agent shall reexamine the committed patient and shall determine whether he continues to require commitment to the facility and whether a treatment plan complying with this part has been implemented. If the patient no longer requires commitment to the facility in accordance with the standards for commitment, he must be released immediately unless he agrees to continue with treatment on a voluntary basis. If for sound professional reasons a treatment plan has not been implemented, this fact shall be reported immediately to the professional person in charge of the facility, the director of the department, the mental disabilities board of visitors, and the patient's counsel.

History: En. 38-1325 by Sec. 25, Ch. 466, L. 1975; amd. Sec. 14, Ch. 546, L. 1977; R.C.M. 1947, 38-1325.

53-21-164. Treatment of children and young adults. In addition to complying with all the other standards herein, a mental health facility shall make special provisions for the treatment of patients who are children and young adults. These provisions shall include but are not limited to:

(1) opportunities for publicly supported education suitable to the educational needs of the patient. This program of education must, in the opinion of the attending professional person, be compatible with the patient's mental condition and his treatment program and otherwise be in the patient's best interest.

(2) a treatment plan which considers the chronological, maturational, and developmental level of the patient;

(3) sufficient professional persons, teachers, and staff members with specialized skills in the care and treatment of children and young adults;

(4) recreation and play opportunities, in the open air where possible, and appropriate residential facilities separate, wherever possible, from older patients;

(5) arrangements for contact between the facility and the family of the patient.

History: **En. 38-1327 by Sec. 27, Ch. 466, L. 1975; R.C.M. 1947, 38-1327.**

53-21-165. Records to be maintained. Complete patient records shall be kept by the mental health facility and shall be available to any person authorized by the patient in writing to receive these records and upon approval of the authorization by the board. The records shall also be made available to any attorney charged with representing the patient or any professional person charged with evaluating or treating the patient. These records shall include:

(1) identification data, including the patient's legal status;

(2) a patient history, including but not limited to:

(a) family data, educational background, and employment record;

(b) prior medical history, both physical and mental, including prior hospitalization;

(3) the chief complaints of the patient and the chief complaints of others regarding the patient;

(4) an evaluation which notes the onset of illness, the circumstances leading to admission, attitudes, behavior, estimate of intellectual functioning, memory functioning, orientation, and an inventory of the patient's assets in descriptive rather than interpretative fashion;

(5) a summary of each physical examination which describes the results of the examination;

(6) a copy of the individual treatment plan and any modifications thereto;

(7) a detailed summary of the findings made by the reviewing professional person after each periodic review of the treatment plan which analyzes the successes and failures of the treatment program and directs whatever modifications are necessary;

(8) a copy of the individualized after-care plan and any modifications thereto and a summary of the steps that have been taken to implement that plan;

(9) a medication history and status which includes the signed orders of the prescribing physician. The staff person administering the medication shall indicate by signature that orders have been carried out.

(10) a detailed summary of each significant contact by a professional person with the patient;

(11) a detailed summary, on at least a weekly basis, by a professional person involved in the patient's treatment, of the patient's progress along the treatment plan;

(12) a weekly summary of the extent and nature of the patient's work activities and the effect of such activity upon the patient's progress along the treatment plan;

(13) a signed order by a professional person for any restrictions on visitations and communications;

(14) a signed order by a professional person for any physical restraints and isolation;

(15) a detailed summary of any extraordinary incident in the facility involving the patient, to be entered by a staff member noting that he has personal knowledge of the incident or specifying his other source of information and initialed within 24 hours by a professional person; and

(16) a summary by the professional person in charge of the facility or his appointed agent of his findings after the 30-day review provided for in 53-21-163.

History: **En. 38-1328 by Sec. 28, Ch. 466, L. 1975; amd. Sec. 15, Ch. 546, L. 1977; R.C.M. 1947, 38-1328; amd. Sec. 12, Ch. 547, L. 1979.**

53-21-166. Records to be confidential — exceptions. All information obtained and records prepared in the course of providing any services under this part to individuals under any provision of this part shall be confidential and privileged matter. Such information and records may be disclosed only:

(1) in communications between qualified professional persons in the provision of services or appropriate referrals;

(2) when the recipient of services designates persons to whom information or records may be released, provided that if a recipient of services is a ward and his guardian or conservator designates in writing persons to whom records or information may be disclosed, such designation shall be valid in lieu of the designation by the recipient; except that nothing in this section shall be construed to compel a physician, psychologist, social worker, nurse, attorney, or other professional person to reveal information which has been given to him in confidence by members of a patient's family;

(3) to the extent necessary to make claims on behalf of a recipient of aid, insurance, or medical assistance to which he may be entitled;

(4) for research if the department has promulgated rules for the conduct of research; such rules shall include but not be limited to the requirement that all researchers must sign an oath of confidentiality;

(5) to the courts as necessary to the administration of justice;

(6) to persons authorized by an order of court, after notice and opportunity for hearing to the person to whom the record or information pertains and the custodian of the record or information pursuant to the rules of civil procedure;

(7) to members of the mental disabilities board of visitors or their agents when necessary to perform their functions as set out in 53-21-104.

History: **En. 38-1329 by Sec. 29, Ch. 466, L. 1975; R.C.M. 1947, 38-1329.**

53-21-167. Patient labor. The following rules shall govern patient labor:

(1) No patient shall be required to perform labor which involves the operation and maintenance of a facility or for which the facility is under contract with an outside organization. Privileges or release from the facility shall not be conditioned upon the performance of labor covered by this provision. Patients may voluntarily engage in such labor if the labor is compensated in accordance with the minimum wage laws of the Fair Labor Standards Act, 29 U.S.C., sec. 206, as amended.

(2) (a) Patients may be required to perform therapeutic tasks which do not involve the operation and maintenance of the facility, provided the specific task or any change in assignment is:

(i) an integrated part of the patient's treatment plan and approved as a therapeutic activity by a professional person responsible for supervising the patient's treatment; and

(ii) supervised by a staff member to oversee the therapeutic aspects of the activity.

(b) Patients may voluntarily engage in therapeutic labor for which the facility would otherwise have to pay an employee, provided the specific labor or any change in labor assignment is:

(i) an integrated part of the patient's treatment plan and approved as a therapeutic activity by a professional person responsible for supervising the patient's treatment;

(ii) supervised by a staff member to oversee the therapeutic aspects of the activity; and

(iii) compensated in accordance with the minimum wage laws of the Fair Labor Standards Act, 29 U.S.C., sec. 206, as amended.

(3) If any patient performs therapeutic labor which involves the operation and maintenance of a facility but due to physical or mental disability is unable to perform the labor as efficiently as a person not so physically or mentally disabled, then the patient may be compensated at a rate which bears the same approximate relation to the statutory minimum wage as his ability to perform that particular job bears to the ability of a person not so afflicted.

(4) Patients may be required to perform tasks of a personal housekeeping nature, such as the making of one's own bed.

(5) Deductions or payments for care and other charges shall not deprive a patient of a reasonable amount of the compensation received pursuant to this section for personal and incidental purchases and expenses.

History: En. 38-1318 by Sec. 18, Ch. 466, L. 1975; R.C.M. 1947, 38-1318.

53-21-168. Statement of rights to be furnished and posted. Each patient shall promptly upon his admission receive in language he understands a written statement of all of his rights under this part, including the right to treatment, the right to the development of a treatment plan, the right to and the availability of legal counsel, and the rules for patient labor. In addition, a copy of the foregoing statement shall be posted in each ward.

History: En. 38-1331 by Sec. 31, Ch. 466, L. 1975; amd. Sec. 17, Ch. 546, L. 1977; R.C.M. 1947, 38-1331.

53-21-169 through 53-21-180 reserved.

53-21-181. Discharge during or at end of initial commitment period. At any time within the 3-month period provided for in 53-21-127(2), the patient may be discharged on the written order of the professional person in charge of him. In the event the patient is not discharged within the 3-month period and if the term is not extended as provided for in 53-21-128, he shall be discharged by the facility at the end of 3 months without further order of the court. Notice of the discharge shall be filed with the court and the county attorney at least 5 days prior to the discharge.

History: En. 38-1306 by Sec. 6, Ch. 466, L. 1975; amd. Sec. 6, Ch. 546, L. 1977; R.C.M. 1947, 38-1306(2).

53-21-182. Court-ordered release to alternative placement or treatment. At any time during the patient's commitment, the court may, on its own initiative or upon application of the professional person in charge of the patient, the patient, his next of kin, his attorney, or the friend of respondent appointed by the court, order the patient to be placed in the care and custody of relatives or guardians or to be provided outpatient therapy or other appropriate placement or treatment.

History: En. 38-1306 by Sec. 6, Ch. 466, L. 1975; amd. Sec. 6, Ch. 546, L. 1977; R.C.M. 1947, 38-1306(5); amd. Sec. 14, Ch. 547, L. 1979.

53-21-183. Release conditioned on receipt of outpatient care. (1) When, in the opinion of the professional person in charge of a mental health facility providing involuntary treatment, the committed person can be appropriately served by outpatient care prior to the expiration of the period of commitment, then outpatient care may be required as a condition for early release for a period which, when added to the inpatient treatment period, may not exceed the period of commitment. If the mental health facility designated to provide outpatient care is other than the facility providing involuntary treatment, the outpatient facility so designated must agree in writing to assume such responsibility.

(2) The mental health facility designated to provide outpatient care or the professional person in charge of the patient's case may modify the conditions for continued release when the modification is in the best interest of the patient. This includes the authorization to transfer the patient to another mental health facility designated to provide outpatient care, provided the transfer is in the best interest of the patient and the outpatient facility so designated agrees in writing to assume responsibility. Notice of an intended transfer shall be given to the professional person in charge of the mental health facility that provided the involuntary treatment.

(3) If the mental health facility designated to provide outpatient care determines that a conditionally released person is failing to adhere to the terms and conditions of his release and because of that failure has become a substantial danger to himself or other persons, then, upon notification by the mental health facility designated to provide outpatient care or on his own motion, the professional person in charge of the patient's case may order that the conditionally released person be apprehended and returned to the facility from which he was conditionally released. The professional person in charge of the patient's case may modify or rescind the order at any time. The professional person shall mail or deliver notice to the person detained, his attorney, if any, his guardian or conservator, if any, his next of kin, if known, and the friend of respondent appointed by the court. The sheriff of the county where the mental health facility is located and from which the patient is being transferred has the duty of transporting a patient under the provisions of this section.

(4) The proceedings set forth in subsection (3) of this section may be initiated by the professional person in charge of the patient's case on the same basis set forth therein without the professional person requiring or ordering the apprehension and detention of the conditionally released person.

(5) Notice in writing to the court which committed the patient for treatment and the county attorney who initiated the action shall be provided by

the professional person in charge of him at least 5 days prior to his release from commitment or outpatient care.

History: **En. 38-1308 by Sec. 8, Ch. 466, L. 1975; amd. Sec. 8, Ch. 546, L. 1977; R.C.M. 1947, 38-1308; amd. Sec. 14, Ch. 547, L. 1979.**

53-21-184. Patients for whom release and discharge provisions inapplicable. The release and discharge provisions of this part shall not apply to any patient held upon an order of court or judge in a proceeding arising out of a criminal act.

History: **En. Sec. 1, Ch. 145, L. 1941; R.C.M. 1947, 38-501.**

53-21-185. Care and treatment following release. The department and its agents have an affirmative duty to provide adequate transitional treatment and care for all patients released after a period of involuntary confinement. Transitional care and treatment possibilities include but are not limited to psychiatric day care, treatment in the home by a visiting therapist, nursing home or extended care, a half-way house, outpatient treatment, and treatment in the psychiatric ward of a general hospital.

History: **En. 38-1326 by Sec. 26, Ch. 466, L. 1975; R.C.M. 1947, 38-1326.**

53-21-186. Support of patient conditionally released. When a mental health facility conditionally releases a patient committed to its care, it is not liable for his support while conditionally released. Liability devolves upon the legal guardian, parent, or person under whose care the patient is placed when conditionally released or upon any other person legally liable for his support. The public welfare officials of the county where the patient resides or is found are responsible for providing relief and care for a conditionally released patient who is unable to maintain himself or who is unable to secure support from the person under whose care he was placed on convalescent leave, like any other person in need of relief and care, under the public assistance laws.

History: **En. Sec. 6, Ch. 145, L. 1941; amd. Sec. 1, Ch. 149, L. 1953; amd. Sec. 5, Ch. 152, L. 1957; amd. Sec. 32, Ch. 120, L. 1974; amd. Sec. 34, Ch. 466, L. 1975; amd. Sec. 3, Ch. 37, L. 1977; R.C.M. 1947, 38-506.**

53-21-187. Clothing for patients discharged or conditionally released. A patient may not be discharged or conditionally released from a mental health facility without suitable clothing adapted to the season in which he is discharged.

History: **En. Sec. 7, Ch. 145, L. 1941; amd. Sec. 6, Ch. 152, L. 1957; amd. Sec. 33, Ch. 120, L. 1974; amd. Sec. 35, Ch. 466, L. 1975; R.C.M. 1947, 38-507.**

53-21-188. Maintenance of indigent patients on discharge. Prior to the discharge of a committed patient from a mental health facility, the professional person in charge of the facility shall notify the welfare department of the county from which the patient was committed. The county welfare department shall at once ascertain whether the discharged patient is in financial need. If the patient is found to be in financial need, the county welfare department shall properly care for and maintain the discharged patient under the laws of this state relating to public assistance until the patient is able to care for himself or until another provision has been made for care of the patient.

History: En. Sec. 2, Ch. 165; L. 1943; amd. Sec. 24, Ch. 266, L. 1963; amd. Sec. 7, Ch. 120, L. 1974; amd. Sec. 32, Ch. 466, L. 1975; amd. Sec. 1, Ch. 37, L. 1977; R.C.M. 1947, 38-110; amd. Sec. 13, Ch. 547, L. 1979.

53-21-189. Fact of evaluation or treatment not to be used for discrimination. No person who has received evalutation or treatment under any of the provisions of this part may be discriminated against because of that status. For purposes of this section, "discrimination" means giving any unfavorable weight to the fact of hospitalization or outpatient care and treatment unrelated to a person's present capacity to meet standards applicable to all persons.

History: En. 38-1313 by Sec. 13, Ch. 466, L. 1975; amd. Sec. 11, Ch. 546, L. 1977; R.C.M. 1947, 38-1313(part).

53-21-190. Fact of evaluation or treatment not to be used in subsequent court proceeding — exception. The fact that a person has received evaluation and treatment, whether voluntarily or involuntarily, at a mental health facility may not be admitted into evidence in a subsequent proceeding for involuntary commitment or for the appointment of a guardian or conservator unless it is necessary to a determination of the present condition of the respondent or the prognosis for treatment in the present case and the judge determines that the need for the evidence outweighs the prejudicial effect of its admission.

History: En. 38-1313 by Sec. 13, Ch. 466, L. 1975; amd. Sec. 11, Ch. 546, L. 1977; R.C.M. 1947, 38-1313(part).

Part 2

Community Mental Health Centers

53-21-201. Definitions. As used in this part, the following definitions apply:

(1) "Public mental health facility" means any public service or group of services offering mental health care on an inpatient or outpatient basis to the mentally ill.

(2) "Community comprehensive mental health center" means a facility, not necessarily encompassed within one building, offering at least the following six basic mental health services to the public:

(a) 24-hour inpatient care;
(b) part-time hospitalization;
(c) outpatient service;
(d) emergency service;
(e) consultation and education in mental health;
(f) precare and aftercare.

(3) "Mental health clinic" means an outpatient facility offering mental health care to the public.

(4) "Department" means the department of institutions.

History: En. 80-2801 by Sec. 1, Ch. 509, L. 1975; R.C.M. 1947, 80-2801.

53-21-202. Duties of department. The department shall:

(1) take cognizance of matters affecting the mental health of the citizens of the state;

(2) initiate preventive mental health activities of the statewide mental health programs, including but not limited to the implementation of mental health care and treatment, prevention, and research as can best be accomplished by community-centered services. Such means shall be utilized to initiate and operate these services in cooperation with local agencies as established under this part.

(3) make scientific and medical research investigations relative to the incidence, cause, prevention, treatment, and care of the mentally ill;

(4) collect and disseminate information relating to mental health;

(5) prepare and maintain a comprehensive plan for the development of public mental health services in the state. The public mental health services shall include but not be limited to community comprehensive mental health centers, mental health clinics, traveling service units, and consultative and educational services.

(6) provide by regulations for the examination of persons who apply for examination or who are admitted either as inpatients or outpatients into Warm Springs state hospital or other public mental health facilities;

(7) receive from agencies of the United States and other state agencies, persons or groups of persons, associations, firms, or corporations grants of money, receipts from fees, gifts, supplies, materials, and contributions for the development of mental health services within the state;

(8) establish standards for public mental health facilities; and

(9) evaluate performance of public mental health facilities in compliance with federal and state standards.

History: En. 80-2802 by Sec. 2, Ch. 509, L. 1975; amd. Sec. 52, Ch. 37, L. 1977; R.C.M. 1947, 80-2802.

53-21-203. Departmental contracts with mental health corporations. (1) The department may enter into contracts with regional mental health corporations for the purposes of the prevention, diagnosis, and treatment of mental illness. Under rules adopted by the department, mental health corporations may be provided for directly by state agencies or indirectly through contract or cooperative arrangements with other agencies of government, regional or local, private or public agencies, private professional persons, or hospitals.

(2) State funds specifically appropriated for regional mental health service contracts shall not exceed 50% of the budget approved by the department. Furthermore, the department may establish a system whereby funds appropriated to the Warm Springs state hospital for patient care may be transferred to the community mental health services used to implement this part. If the patient load at Warm Springs state hospital is reduced and these patients become patients of a community mental health service, a portion of the funds appropriated for Warm Springs state hospital may be used to supplement the regional budget. However, if those patients are returned to Warm Springs state hospital from the community mental health services, these funds may revert back to the Warm Springs state hospital. The department shall establish rules to implement this provision.

History: En. 80-2803 by Sec. 3, Ch. 509, L. 1975; R.C.M. 1947, 80-2803.

53-21-204. Mental health corporations. (1) Mental health regions shall be established in the state mental health plan and shall conform to the mental health regions as established in the state mental health construction plan promulgated by the board of health and environmental sciences under the federal Community Mental Health Centers Act.

(2) The mental health regions shall establish themselves under Title 35, chapter 2. Upon incorporation, a mental health region may enter into contracts with the department in order to carry out the department's comprehensive plan for mental health. These nonprofit corporations shall not be considered agencies of the department or the state of Montana; however, they may retain and enter into retirement programs as established under Title 19, chapter 3, The Public Employees' Retirement System Act. Upon the establishment of the mental health regions, the county commissioners in each of the various counties in the region shall designate a person from their respective county to serve as a representative of the county on the regional mental health corporation board. The board shall be established under guidelines adopted by the bylaws of the corporation. All appointments to the board shall be for terms of 2 years, and the department shall be notified in writing of all appointments.

(3) The duties of an organized regional mental health corporation board include:

(a) annual review and evaluation of mental health needs and services within the region;

(b) preparation and submission to the department and to each of the counties in the region of plans and budget proposals to provide and support mental health services within the region;

(c) establishment of a recommended proportionate level of financial participation of each of the counties within the region in the provision of mental health services within the limits of this section;

(d) receipt and administration of moneys and other support made available for the purposes of providing mental health services by the participating agencies, including grants from the United States government and other agencies, receipts for established fees for services rendered, tax moneys, gifts, donations, and any other type of support or income. All funds received by the board in accordance with this part shall be used to carry out the purposes of this part.

(e) supervision of appropriate administrative staff personnel of the operation of community mental health services within the region;

(f) keeping all records of the board and making reports required by the department.

(4) Regional mental health board members shall be reimbursed from funds of the board for actual and necessary expenses incurred in attending meetings and in the discharge of board duties when assigned by the board.

(5) Prior to June 10 of each year, the board of mental health shall submit to the board of county commissioners of each of the counties within the constituted mental health region an annual budget, specifying each county's recommended proportionate share. If the board of county commissioners includes in the county budget the county's proportionate share of the regional board's budget, it shall be designated as a participating county. Funds for each participating county's proportionate share for the operation of mental

health services within the region shall be derived from the county's general fund. If the general fund is insufficient to meet the approved budget, a levy not to exceed 1 mill may be made on the taxable valuation of the county in addition to all other taxes allowed by law to be levied on such property.

(6) The regional board of mental health with the approval of the department shall establish a schedule of fees for mental health services. The fees may be received by the board and used to implement the budget in accordance with 53-21-204(3)(d).

History: **En. 20-2804 by Sec. 4, Ch. 509, L. 1975; R.C.M. 1947, 80-2804.**

53-21-205. Continuation of services. Nothing in this part shall be construed to prevent the continuation of existing mental health services or facilities.

History: **En. 80-2805 by Sec. 5, Ch. 509, L. 1975; R.C.M. 1947, 80-2805.**

53-21-206. Availability of services. The services of the department and of the incorporated regional mental health centers are available without discrimination on the basis of race, color, creed, religion, or ability to pay and shall comply with Title VI of the Civil Rights Act of 1964.

History: **En. 80-2806 by Sec. 6, Ch. 509, L. 1975; amd. Sec. 17, Ch. 38, L. 1977; R.C.M. 1947, 80-2806.**

Part 3

Warm Springs State Hospital

53-21-301. Location and function of hospital. The institution located at Warm Springs is the Warm Springs state hospital. The function of the state hospital is the care and treatment of mentally ill persons.

History: **En. Sec. 67, Ch. 199, L. 1965; amd. Sec. 31, Ch. 320, L. 1967; amd. Sec. 3, Ch. 90, L. 1974; amd. Sec. 60, Ch. 120, L. 1974; R.C.M. 1947, 80-2401.**

Compiler's Comments

Transfer of funds. Sec. 1, Ch. 372, L. 1979, provided: "After all outstanding general obligation bonds issued in 1955 for construction at the Warm Springs state hospital have been redeemed and all expenses incurred in liquidating the bonds have been paid, all money remaining in the Warm Springs state hospital sinking account or money to be deposited in that account in the sinking fund are transferred from that account in the sinking fund to the general fund of the state."

53-21-302. Qualifications of superintendent. (1) The superintendent of the Warm Springs state hospital shall be either:

(a) a licensed physician who has fulfilled the residency requirements of the American board of psychiatry and neurology in the speciality of psychiatry and a minimum of 1 year full-time experience in hospital administration; or

(b) a person with a master's degree in hospital administration.

(2) The superintendent shall have a minimum of 3 years' full-time experience in hospital administration.

History: **En. Sec. 68, Ch. 199, L. 1965; amd. Sec. 32, Ch. 320, L. 1967; amd. Sec. 62, Ch. 120, L. 1974; amd. Sec. 1, Ch. 338, L. 1974; amd. Sec. 1, Ch. 428, L. 1975; R.C.M. 1947, 80-2402.**

Part 4

Community-Based Nursing Homes Center for the Aged

53-21-401. Legislative intent. (1) It is the intent of the legislature that geriatric patients at Warm Springs state hospital and geriatric residents of the state who may in the future be placed at Warm Springs state hospital and who do not need intensive psychiatric care receive care and treatment in nursing homes located in community settings.

(2) It is the further intent of the legislature that nursing homes providing such care and treatment be located regionally so that the residents may be near their homes and families.

(3) It is the further intent of the legislature that these nursing homes shall be located in communities with:

(a) a labor pool large enough to ensure adequate and qualified staffing;

(b) sufficient medical facilities and medical professionals to provide necessary medical services; and

(c) if possible, an institution or institutions of higher learning with educational programs in disciplines with relevance to the problems of aging.

History: En. 80-2413 by Sec. 1, Ch. 523, L. 1975; R.C.M. 1947, 80-2413.

53-21-402. Powers and duties of department of institutions. The department of institutions:

(1) shall contract with nonprofit corporations which demonstrate expertise in and the capability of providing rehabilitative and restorative programs for aged citizens for the operation and management of nursing homes established under this part;

(2) shall ensure that nursing homes established and operated under this part are in compliance with all applicable federal and state regulations;

(3) shall adopt rules for staffing requirements and the admission of patients;

(4) shall provide that geriatric residents of Warm Springs state hospital have first priority for admission to nursing homes established under this part;

(5) may accept grants, gifts, bequests, and contributions in money or property or any other form from individuals, corporations, associations, or federal, state, and local government agencies for the purposes of establishing and operating nursing homes under this part.

History: En. 80-2414 by Sec. 4, Ch. 523, L. 1975; R.C.M. 1947, 80-2414.

53-21-403 through 53-21-410 reserved.

53-21-411. Location and function of center. The institution located at Lewistown is the Montana center for the aged. The primary function of the center is the care and treatment of persons who have been admitted to Warm Springs state hospital and subsequently transferred to the center.

History: En. Sec. 71, Ch. 199, L. 1965; amd. Sec. 70, Ch. 120, L. 1974; amd. Sec. 36, Ch. 466, L. 1975; R.C.M. 1947, 80-2501.

53-21-412. Transfer of patients between Warm Springs and Galen hospitals and center. With the approval of the department of institutions, the Warm Springs state hospital may transfer a patient to the center or from the center to the state hospital. With the approval of the department, the state hospital may transfer a patient residing at the center to Galen state hospital. Unless a medical or psychiatric emergency exists, 15 days prior to the transfer the department shall notify the patient's parent, guardian, or spouse or, if none is known, his nearest relative or friend. In the case of an emergency transfer, the department shall send notice within 72 hours after the time of transfer.

History: **En. Sec. 72, Ch. 199, L. 1965; amd. Sec. 71, Ch. 120, L. 1974; R.C.M. 1947, 80-2502.**

53-21-413. Discharge or convalescent release of patients. Upon the request of the superintendent of the center, the superintendent of the state hospital may authorize the discharge or release on convalescent status of a patient residing at the center under the same restrictions provided by law for the discharge and release on convalescent status of patients of the state hospital.

History: **En. Sec. 73, Ch. 199, L. 1965; R.C.M. 1947, 80-2503.**

CHAPTER 22

INTERSTATE COMPACT ON MENTAL HEALTH

Part 1 — General Provisions

Section

53-22-101. Enactment of compact.
53-22-102. Compact administrator.
53-22-103. Supplementary agreements.
53-22-104. Annual budget.
53-22-105. Court review.
53-22-106. Authenticated copies.

Part 1

General Provisions

53-22-101. Enactment of compact. The Interstate Compact on Mental Health as contained herein is hereby enacted into law and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows:

The contracting states solemnly agree that:

Article I

The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by cooperative action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in terms of such welfare.

Article II

As used in this compact:

(1) "sending state" means a party state from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be so sent;

(2) "receiving state" means a party state to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be so sent;

(3) "institution" means any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency;

(4) "patient" means any person subject to or eligible, as determined by the laws of the sending state, for institutionalization or other care, treatment, or supervision pursuant to the provisions of this compact;

(5) "aftercare" means care, treatment, and services provided a patient, as defined herein, on convalescent status or conditional release;

(6) "mental illness" means mental disease to such extent that a person so afflicted requires care and treatment for his own welfare, the welfare of others, or of the community;

(7) "mental deficiency" means mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is incapable of managing himself and his affairs but shall not include mental illness as defined herein; and

(8) "state" means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

Article III

(1) Whenever a person physically present in any party state shall be in need of institutionalization by reason of mental illness or mental deficiency, he shall be eligible for care and treatment in an institution in that state irrespective of his residence, settlement, or citizenship qualifications.

(2) The provisions of subsection (1) of this article to the contrary notwithstanding, any patient may be transferred to an institution in another state whenever there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors referred to in this subsection shall include the patient's full record with due regard for the location of the patient's family, character of the illness and probable duration thereof, and such other factors as shall be considered appropriate.

(3) No state shall be obliged to receive any patient pursuant to the provisions of subsection (2) of this article unless the sending state gives advance notice of its intention to send the patient, furnishes all available medical and other pertinent records concerning the patient, gives the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if said authorities so wish, and unless the receiving state agrees to accept the patient.

(4) In the event that the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that he would be taken if he were a local patient.

(5) Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

Article IV

(1) Whenever, pursuant to the laws of the state in which a patient is physically present, it shall be determined that the patient should receive aftercare or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state shall have reason to believe that aftercare in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of affording the patient such aftercare in said receiving state, and such investigation shall be made with all reasonable speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient, and such other documents as may be pertinent.

(2) If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby and if the public safety would not be jeopardized thereby, the patient may receive aftercare or supervision in the receiving state.

(3) In supervising, treating, or caring for a patient on aftercare pursuant to the terms of this article, a receiving state shall employ the same standards of visitation, examination, care, and treatment that it employs for similar local patients.

Article V

Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the escapee in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, he shall be detained in the state where found pending disposition in accordance with law.

Article VI

The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any and all states party to this compact without interference.

Article VII

(1) No person shall be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

(2) The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any two or more party states may, by making a specific arrangement for that purpose, arrange for a different allocation of costs as among themselves.

(3) No provision of this compact shall be construed to alter or affect any internal relationships among the departments, agencies, and officers of and in the government of a party state or between a party state and its subdivisions as to the payment of costs or responsibilities therefor.

(4) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency, or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to any provision of this compact.

(5) Nothing in this compact shall be construed to invalidate any reciprocal agreement between a party state and a nonparty state relating to institutionalization, care, or treatment of the mentally ill or mentally deficient or any statutory authority pursuant to which such agreements may be made.

Article VIII

(1) Nothing in this compact shall be construed to abridge, diminish, or in any way impair the rights, duties, and responsibilities of any patient's guardian on his own behalf or in respect of any patient for whom he may serve, except that, where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment and the court which appointed the previous guardian shall, upon being duly advised of the new appointment and upon the satisfactory completion of such accounting and other acts as such court may by law require, relieve the previous guardian of power and responsibility to whatever extent shall be appropriate in the circumstances. In the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state shall have the sole discretion to relieve a guardian appointed by it or continue his power and responsibility, whichever it shall deem advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

(2) The term "guardian" as used in subsection (1) of this article shall include any guardian, trustee, legal committee, conservator, or other person or agency however denominated who is charged by law with power to act for or responsibility for the person or property of a patient.

Article IX

(1) No provisions of this compact except Article V shall apply to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, said person would be subject to incarceration in a penal or correctional institution.

(2) To every extent possible it shall be the policy of states party to this compact that no patient shall be placed or detained in any prison, jail, or lockup, but such patient shall with all expedition be taken to a suitable institutional facility for mental illness or mental deficiency.

Article X

(1) Each party state shall appoint a compact administrator who, on behalf of his state, shall act as general coordinator of activities under the compact in his state and who shall receive copies of all reports, correspondence, and other documents relating to any patient processed under the compact by his state either in the capacity of a sending or receiving state. The compact administrator or his duly designated representative shall be the official with whom other party states shall deal in any matter relating to the compact or any patient processed thereunder.

(2) The compact administrators of the respective party states shall have power to promulgate reasonable rules to carry out more effectively the terms and provisions of this compact.

Article XI

The duly constituted administrative authorities of any two or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or cooperative basis whenever the states concerned find that such agreements will improve services, facilities, or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this compact.

Article XII

This compact shall enter into full force and effect as to any state when enacted by it into law, and such state shall thereafter be a party thereto with any and all states legally joining therein.

Article XIII

(1) A state party to this compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal shall take effect 1 year after

notice thereof has been communicated officially and in writing to the governors and compact administrators of all other party states. However, the withdrawal of any state shall not change the status of any patient who has been sent to said state or sent out of said state pursuant to the provisions of the compact.

(2) Withdrawal from any agreement permitted by Article VII(2) as to costs or from any supplementary agreement made pursuant to Article XI shall be in accordance with the terms of such agreement.

Article XIV

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: En. Sec. 1, Ch. 112, L. 1971; amd. Sec. 48, Ch. 37, L. 1977; R.C.M. 1947, 80-2412(part).

53-22-102. Compact administrator. The director of the department of institutions, hereafter called "the director", shall be the compact administrator and shall have the power to make any rules necessary for the administration of the compact. The director shall cooperate with all departments, agencies, and officers of the state and any political subdivision thereof to facilitate the proper administration of the Interstate Compact on Mental Health or of any supplementary agreement or agreements entered into thereunder by this state.

History: En. Sec. 1, Ch. 112, L. 1971; amd. Sec. 48, Ch. 37, L. 1977; R.C.M. 1947, 80-2412 (Art. XIV(2)).

53-22-103. Supplementary agreements. The director may enter into supplementary agreements with appropriate officials of other states pursuant to Articles VII and XI of the compact.

History: En. Sec. 1, Ch. 112, L. 1971; amd. Sec. 48, Ch. 37, L. 1977; R.C.M. 1947, 80-2412 (Art. XIV(3)).

53-22-104. Annual budget. The department of institutions in its annual budget shall include such amounts necessary to discharge the financial obligations incurred by it to carry out the purposes of the Interstate Compact on Mental Health, and the legislature shall appropriate such sums necessary therefor.

History: En. Sec. 1, Ch. 112, L. 1971; amd. Sec. 48, Ch. 37, L. 1977; R.C.M. 1947, 80-2412 (Art. XIV(4)).

53-22-105. Court review. The compact administrator is hereby directed to consult with the immediate family of any proposed transferee and, in the case of a proposed transferee from an institution in this state to an institution in another party state, to make no transfer out of the state without approval of the district or probate court. Before granting such approval, the court shall hold such hearings as it considers appropriate. In addition, the court shall designate some appropriate person to deliver written notice of the proposed transferee's right to a hearing to the proposed transferee and his guardian ad litem. The person serving such notices shall make a written return to the court that such has been done. At the conclusion of such hearing, if any, the court may approve the proposed transfer, order the release of the proposed transferee, or enter any other suitable order.

History: En. Sec. 1, Ch. 112, L. 1971; amd. Sec. 48, Ch. 37, L. 1977; R.C.M. 1947, 80-2412 (Art. XIV(5)).

53-22-106. Authenticated copies. Duly authenticated copies of the compact shall, upon its approval, be transmitted by the secretary of state to the governor of each state, the attorney general, and the secretary of state of the United States and the Council of State Governments.

History: En. Sec. 1, Ch. 112, L. 1971; amd. Sec. 48, Ch. 37, L. 1977; R.C.M. 1947, 80-2412 (Art. XIV(6)).

CHAPTER 23

EUGENICAL STERILIZATION
(Repealed. Sec. 1, Ch. 286, L. 1981)

Chapter Compiler's Comments

Histories of Repealed Sections:

53-23-101 and 53-23-102. En. Sec. 1, Ch. 332, L. 1969; R.C.M. 1947, 69-6401.

53-23-103 through 53-23-105. En. Secs. 3, 4, 6, Ch. 332, L. 1969; amd. Secs. 34, 35, 37, Ch. 120, L. 1974; R.C.M. 1947, 69-6403, 69-6404, 69-6406.

CHAPTER 24

ALCOHOLISM AND DRUG DEPENDENCE

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Part 1

General Provisions

53-24-101. Legislative purpose. It is the purpose of this chapter and the policy of this state to recognize alcoholism and drug dependence as problems affecting the health, safety, morals, economy, and general welfare of this state; to recognize alcoholism and drug dependence as problems subject to treatment; and to recognize the sufferer of alcoholism, drug dependence, or both as worthy of treatment and rehabilitation. It is the intent of this chapter to establish means whereby the appropriate resources of this state may be focused fully and effectively upon the problems of alcoholism and drug dependence and utilized in implementing programs for the control and treatment of these problems.

History: En. Sec. 1, Ch. 303, L. 1969; Sec. 69-6201, R.C.M. 1947; redes. 80-2701 by Sec. 6, Ch. 280, L. 1975; amd. Sec. 49, Ch. 37, L. 1977; R.C.M. 1947, 80-2701.

53-24-102. Declaration of policy. It is the policy of the state of Montana to recognize alcoholism as an illness and that alcoholics and intoxicated persons may not be subjected to criminal prosecution because of their consumption of alcoholic beverages but rather should be afforded a continuum of treatment in order that they may lead normal lives as productive members of society.

History: En. 69-6211 by Sec. 1, Ch. 302, L. 1974; Sec. 69-6211, R.C.M. 1947; redes. 80-2708 by Sec. 6, Ch. 280, L. 1975; R.C.M. 1947, 80-2708.

53-24-103. Definitions. For purposes of this chapter, the following definitions apply:

(1) "Alcoholic" means a person who has a chronic illness or disorder of behavior characterized by repeated drinking of alcoholic beverages to the extent that it endangers the health, interpersonal relationships, or economic function of the individual or public health, welfare, or safety.

(2) "Approved private treatment facility" means a private nonprofit agency, receiving public funds (whose function is the treatment, rehabilitation, and prevention of alcoholism and drug dependence) meeting the standards prescribed in 53-24-208(1) and approved under 53-24-208.

(3) "Approved public treatment facility" means:

(a) a treatment agency operating under the direction and control of the department as a state agency and approved under 53-24-208; or

(b) a treatment agency operating under the direction and control of a local government and approved under 53-24-208.

(4) "Department" means the department of institutions provided for in 2-15-2301.

(5) "Family member" is the spouse, mother, father, child, or member of the household of an alcoholic whose life has been affected by the actions of the alcoholic and may require treatment.

(6) "Incapacitated by alcohol" means that a person, as a result of the use of alcohol, is unconscious or has his judgment otherwise so impaired that he is incapable of realizing and making a rational decision with respect to his need for treatment.

(7) "Incompetent person" means a person who has been adjudged incompetent by the district court.

(8) "Intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol.

(9) "Prevention" has meaning on four levels; these are:

(a) education to provide information to the school children and general public relating to alcohol dependence and alcoholism, treatment, and rehabilitative services and to reduce the consequences of life experiences acquired by contact with an alcoholic;

(b) early detection and recovery from the illness before lasting emotional or physical damage, or both, have occurred;

(c) if lasting emotional or physical damage, or both, have occurred, to arrest the illness before full disability has been reached;

(d) the provision of facility requirements to meet division program standards and improve public accessibility for services.

(10) "Treatment" means the broad range of emergency, outpatient, intermediate, and inpatient services and care, including diagnostic evaluation, medical, psychiatric, psychological, and social service care, vocational rehabilitation, and career counseling, which may be extended to alcoholics, intoxicated persons, and family members.

History: En. 69-6212 by Sec. 2, Ch. 302, L. 1974; Sec. 69-6212, R.C.M. 1947; amd. and redes. 80-2709 by Sec. 2, Ch. 280, L. 1975; amd. Sec. 1, Ch. 414, L. 1977; R.C.M. 1947, 80-2709; amd. Sec. 1, Ch. 711, L. 1979.

53-24-104. Deposit of funds from federal or private sources with state treasurer. Funds available to the department from federal or private sources for use in alcoholism and drug dependence prevention, treatment, and control programs shall be deposited with the state treasurer to the account of the department in the federal and private revenue fund.

History: En. Sec. 7, Ch. 303, L. 1969; Sec. 69-6207, R.C.M. 1947; redes. 80-2707 by Sec. 6, Ch. 280, L. 1975; R.C.M. 1947, 80-2707; amd. Sec. 15, Ch. 38, L. 1979.

53-24-105. Application of administrative procedure act. The Montana Administrative Procedure Act applies to and governs all administrative actions taken under this chapter.

History: En. 69-6224 by Sec. 14, Ch. 302, L. 1974; Sec. 69-6224, R.C.M. 1947; redes. 80-2721 by Sec. 6, Ch. 280, L. 1975; R.C.M. 1947, 80-2721.

53-24-106. Criminal laws limitation. (1) No county, municipality, or other political subdivision may adopt or enforce a local law, ordinance, resolution, or rule having the force of law that includes drinking, being a common drunkard, or being found in an intoxicated condition as one of the elements of the offense giving rise to a criminal or civil penalty or sanction.

(2) Nothing in this section affects any law, ordinance, resolution, or rule against drunken driving, driving under the influence of alcohol, or other similar offense involving the operation of a vehicle, an aircraft, a boat, machinery, or other equipment or regarding the sale, purchase, dispensing, possessing, or use of alcoholic beverages at stated times and places or by a particular class of persons.

History: En. 80-2723 by Sec. 2, Ch. 403, L. 1975; R.C.M. 1947, 80-2723.

53-24-107. Public intoxication not a criminal offense. (1) A person who appears to be intoxicated or incapacitated by alcohol in public commits no criminal offense solely by reason of being in such condition but may be detained by a peace officer for the person's own protection. A peace officer who detains a person who appears to be intoxicated or incapacitated by alcohol in public shall proceed in the manner as provided by 53-24-303.

(2) If none of the alternatives in 53-24-303 are reasonably available, a peace officer may detain a person who appears to be intoxicated or incapacitated by alcohol in jail until the person is no longer creating a risk to himself or others.

(3) A peace officer, acting within the scope of his authority under this chapter, shall not be personally liable for his actions.

History: En. 80-2724 by Sec. 3, Ch. 403, L. 1975; R.C.M. 1947, 80-2724.

53-24-108. Utilization of funds generated by taxation on alcoholic beverages. (1) Revenue generated by 16-1-404, 16-1-406, and 16-1-408 to state-approved programs whose function is the treatment, rehabilitation, and prevention of alcoholism may be distributed in either of the following manners:

(a) as payment of fees for alcoholism services provided by state-approved alcoholism programs and licensed hospitals for detoxification services; or

(b) as grants to state-approved alcoholism programs.

(2) No person operating a state-approved alcoholism program may be required to provide matching funds as a condition of receiving a grant under subsection (1) of this section.

(3) In addition to funding received under this section, a person operating a state-approved alcoholism program may accept gifts, bequests, or the donation of services or money for the treatment, rehabilitation, or prevention of alcoholism.

(4) No person receiving funding under this section to support operation of a state-approved alcoholism program may refuse alcoholism treatment, rehabilitation, or prevention services to a person solely because of that person's inability to pay for those services.

(5) A grant made under this section is subject to the following conditions:

(a) The grant application must contain an estimate of all program income, including income from earned fees, gifts, bequests, donations, and grants from other than state sources during the period for which grant support is sought.

(b) Whenever, during the period of grant support, program income exceeds the amount estimated in the grant application, the amount of the excess shall be reported to the grantor.

(c) The excess shall be used by the grantee under the terms of the grant in accordance with one or a combination of the following options:

(i) use for any purpose that furthers the objectives of the legislation under which the grant was made; or

(ii) to allow program growth through the expansion of services or for capital expenditures necessary to improve facilities where services are provided.

(6) Revenue generated by 16-1-404, 16-1-406, and 16-1-408 for the treatment, rehabilitation, and prevention of alcoholism which has not been encumbered for those purposes by the counties of Montana or the department shall be returned to the state's earmarked revenue fund for the treatment, rehabilitation, and prevention of alcoholism within 30 days after the close of each fiscal year and will be distributed by the department the following year as provided in 53-24-206(3)(b).

History: En. 80-2725 by Sec. 7, Ch. 414, L. 1977; R.C.M. 1947, 80-2725; amd. Sec. 16, Ch. 38, L. 1979; amd. Sec. 2, Ch. 711, L. 1979; amd. Sec. 1, Ch. 183, L. 1981.

Compiler's Comments

1981 Amendment: Deleted the provision for fees for services provided by certified alcoholism counselors and licensed physicians from (1)(a); added "for detoxification services" at the end of (1)(a); deleted "persons operating" before "state-approved alcoholism programs" in (1)(b); added "and will be distributed by the department the following year as provided in 53-24-206(3)(b)" at the end of (6).

Part 2

Administration by Department of Institutions

53-24-201. Department to administer chapter. The department shall administer the provisions of this chapter.

History: En. Sec. 5, Ch. 303, L. 1969; Sec. 69-6205, R.C.M. 1947; redes. 80-2705 by Sec. 6, Ch. 280, L. 1975; R.C.M. 1947, 80-2705.

53-24-202. State and local government to cooperate with department. All agencies of state government, local government, and all state and local government employees shall, upon request, cooperate with the department in its activities under this chapter, but nothing in the chapter shall be construed to give the department control over any state or local agency or employee unless otherwise provided by law.

History: En. Sec. 6, Ch. 303, L. 1969; Sec. 69-6206, R.C.M. 1947; redes. 80-2706 by Sec. 6, Ch. 280, L. 1975; R.C.M. 1947, 80-2706.

53-24-203. Repealed. Sec. 9, Ch. 711, L. 1979.

History: (1) thru (5)En. Sec. 3, Ch. 303, L. 1969; amd. Sec. 94, Ch. 349, L. 1974; Sec. 69-6203, R.C.M. 1947; amd. and redes. 80-2702 by Sec. 1, Ch. 280, L. 1975; amd. Sec. 50, Ch. 37, L. 1977; Sec. 80-2702, R.C.M. 1947; (6) thru (22)En. 69-6214 by Sec. 4, Ch. 302, L. 1974; Sec. 69-6214, R.C.M. 1947; redes. 80-2711 by Sec. 6, Ch. 280, L. 1975; Sec. 80-2711, R.C.M. 1947; R.C.M. 1947, 80-2702(1), 80-2711.

53-24-204. Powers and duties of department. (1) To carry out this chapter, the department may:

(a) accept gifts, grants, and donations of money and property from public and private sources;

(b) enter into contracts;

(c) acquire and dispose of property.

(2) The department shall:

(a) approve treatment facilities as provided for in 53-24-208;

(b) prepare an annual state plan for the delivery of treatment services;

(c) provide for and conduct statewide service system evaluations;

(d) distribute state and federal funds to the counties for approved treatment programs in accordance with the provisions of 53-24-206;

(e) plan in conjunction with approved programs and provide for training of program personnel delivering services to alcoholics;

(f) establish criteria to be used for the development of new programs;

(g) certify and establish standards for the certification of alcoholism and drug dependence counselors;

(h) encourage planning for the greatest utilization of funds by discouraging duplication of services, encouraging efficiency of services through existing programs, and encouraging rural counties to form multicounty districts or contract with urban programs for services; and

(i) cooperate with the board of pardons in establishing and conducting programs to provide treatment for alcoholics and intoxicated persons in or on parole from penal institutions.

History: Ap.p. Sec. 3, Ch. 303, L. 1969; amd. Sec. 94, Ch. 349, L. 1974; R.C.M. 1947, 69-6203; amd. and redes. 80-2702 by Sec. 1, Ch. 280, L. 1975; amd. Sec. 50, Ch. 37, L. 1977; Sec. 80-2702, R.C.M. 1947; Ap.p. Sec. 3, Ch. 302, L. 1974; Sec. 69-6213, R.C.M. 1947; redes. 80-2710 by Sec. 6, Ch. 280, L. 1975; amd. Sec. 2, Ch. 414, L. 1977; Sec. 80-2710, R.C.M. 1947; R.C.M. 1947, 80-2702(2), 80-2710; amd. Sec. 3, Ch. 711, L. 1979; amd. Sec. 176, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "facilities" for "programs" in (2)(a).

53-24-205. Administration of federal program. The department is hereby designated the single state agency for the administration of federal programs under:

(1) the Drug Abuse Office and Treatment Act of 1972, Public Law 92-255, as amended, 21 U.S.C., section 1176; and

(2) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970, Public Law 91-616, as amended, 42 U.S.C., section 4573.

History: En. 80-2703 by Sec. 4, Ch. 280, L. 1975; R.C.M. 1947, 80-2703.

53-24-206. Administration of financial assistance. (1) The department may apply for and receive grants, allotments, or allocations of funds or other assistance for purposes pertaining to the problems of alcoholism and drug dependence or related social problems under laws and rules of the United States, any other state, or any private organization.

(2) The department may cooperate with any other government agency or private organization in programs on alcoholism and drug dependence or related social problems. In carrying out cooperative programs, the department may make grants of financial assistance to government agencies and private organizations under terms and conditions agreed upon.

(3) (a) In administering proceeds derived from the liquor license tax or the beer license tax, the department shall distribute those funds appropriated

by the legislature. Money that is appropriated for distribution to approved programs on a discretionary basis shall be distributed to those programs that can demonstrate that:

(i) the program is achieving the goals and objectives mutually agreed upon by the program and the department; and

(ii) the receipt of additional funds would be justified.

(b) The remainder of the proceeds shall be distributed to the counties for use by approved programs in the following manner:

(i) Eighty-five percent shall be allocated according to the proportion of each county's population to the state's population according to the most recent United States census.

(ii) Fifteen percent shall be allocated according to the proportion of the county's land area to the state's land area.

(c) Money distributed under subsection (3) may only be used for purposes pertaining to the problems of alcoholism or related social problems.

History: En. Sec. 4, Ch. 303, L. 1969; Sec. 69-6204, R.C.M. 1947; redes. 80-2704 by Sec. 6, Ch. 280, L. 1975; R.C.M. 1947, 80-2704; amd. Sec. 17, Ch. 38, L. 1979; amd. Sec. 4, Ch. 711, L. 1979.

Compiler's Comments

Statement of intent. The statement of intent attached to HB 844 (Ch. 711, L. 1979) provided in part: "In exercising its discretion in the distribution of funds under 53-24-206, the department shall distribute the funds to promote the purposes of Title 53, chapter 24, and to insure the viability and continued operation of approved programs that can demonstrate the need for funding in excess of funds that would be available under the allocation formula of 53-24-206(3)(a)."

53-24-207. Comprehensive program for treatment. (1) The department shall establish a comprehensive and coordinated program for the treatment of alcoholics, intoxicated persons, and family members.

(2) The program shall include:

(a) emergency treatment provided by a facility affiliated with or part of the medical service of a general hospital;

(b) inpatient treatment;

(c) intermediate treatment;

(d) outpatient treatment; and

(e) follow-up services.

(3) The department shall provide for adequate and appropriate treatment for alcoholics and intoxicated persons admitted under 53-24-301 through 53-24-304.

(4) All appropriate public and private resources shall be coordinated with and utilized in the program if possible.

(5) The department shall prepare, publish, and distribute annually a list of all approved public and private treatment facilities.

History: En. 69-6215 by Sec. 5, Ch. 302, L. 1974; Sec. 69-6215, R.C.M. 1947; redes. 80-2712 by Sec. 6, Ch. 280, L. 1975; amd. Sec. 3, Ch. 414, L. 1977; R.C.M. 1947, 80-2712; amd. Sec. 5, Ch. 711, L. 1979.

53-24-208. Facility standards. (1) The department shall establish standards for approved treatment facilities that must be met for a treatment facility to be approved as a public or private treatment facility and fix the fees to be charged for the required inspections. The standards may concern only the health standards to be met and standards of treatment to be afforded patients.

(2) Facilities applying for approval must demonstrate a local need currently exists for proposed services and that the proposed services do not duplicate existing local services.

(3) The department shall periodically inspect approved public and private treatment facilities at reasonable times and in a reasonable manner.

(4) The department shall maintain a list of approved public and private treatment facilities.

(5) Each approved public and private treatment facility shall, on request, file with the department data, statistics, schedules, and information the department reasonably requires. An approved public or private treatment facility that without good cause fails to furnish any data, statistics, schedules, or information as requested or files fraudulent returns thereof shall be removed from the list of approved treatment facilities.

(6) The department, after holding a hearing in accordance with the Montana Administrative Procedure Act, may suspend, revoke, limit, or restrict an approval or refuse to grant an approval for failure to meet its standards.

(7) A district court may restrain any violation of this section, review any denial, restriction, or revocation of approval, and grant other relief required to enforce its provisions.

(8) Upon petition of the department and after a hearing held upon reasonable notice to the facility, a district court may issue a warrant to the department authorizing it to enter and inspect at reasonable times and examine the books and accounts of any approved public or private treatment facility refusing to consent to inspection or examination by the department or which the department has reasonable cause to believe is operating in violation of this chapter.

History: En. 69-6216 by Sec. 6, Ch. 302, L. 1974; Sec. 69-6216, R.C.M. 1947; redes. 80-2713 by Sec. 6, Ch. 280, L. 1975; R.C.M. 1947, 80-2713; amd. Sec. 7, Ch. 711, L. 1979.

53-24-209. Rules for acceptance for treatment. The department shall adopt rules for acceptance of persons into the treatment program, considering available treatment resources and facilities, for the purpose of early and effective treatment of alcoholics, intoxicated persons, and family members. In adopting the rules, the department shall be guided by the following standards:

(1) If possible a patient shall be treated on a voluntary rather than an involuntary basis.

(2) A patient shall be initially assigned or transferred to outpatient or intermediate treatment unless he is found to require inpatient treatment.

(3) A person shall not be denied treatment solely because he has withdrawn from treatment against medical advice on a prior occasion or because he has relapsed after earlier treatment.

(4) An individualized treatment plan shall be prepared and maintained on a current basis for each person.

(5) Provision shall be made for a continuum of coordinated treatment services so that a person who leaves a facility or a form of treatment will have available and utilize other appropriate treatment.

History: En. 69-6217 by Sec. 7, Ch. 302, L. 1974; Sec. 69-6217, R.C.M. 1947; redes. 80-2714 by Sec. 6, Ch. 280, L. 1975; amd. Sec. 4, Ch. 414, L. 1977; R.C.M. 1947, 80-2714.

53-24-210. Departmental reports to legislature. The department shall report to each legislative session on the status of the implemented chapter. This report or any part thereof may be included as the department's state plan for alcohol abuse and alcoholism.

History: En. 69-6225 by Sec. 19, Ch. 302, L. 1974; Sec. 69-6225, R.C.M. 1947; amd. and redes. 80-2722 by Sec. 3, Ch. 280, L. 1975; R.C.M. 1947, 80-2722(part).

53-24-211. County plan to be submitted to department. (1) By January 1 of each year, each county must submit to the department a comprehensive countywide plan for the treatment, rehabilitation, and prevention of alcoholism.

(2) The plan must have been approved by the board of county commissioners and must contain information regarding existing nonprofit and local government programs within the county. The plan must also contain information regarding the current and future needs of the county for the treatment, rehabilitation, and prevention of alcoholism.

(3) The department shall approve or disapprove the countywide plan. If the department disapproves a plan, the county may submit another plan to the department. In distributing funds to approved programs in a county, the department shall give consideration to the county plan.

(4) (a) After January 1 of each year, no money may be distributed to a county by the department for the treatment, rehabilitation, and prevention of alcoholism if the county has not submitted a plan as required by subsection (1).

(b) After June 30 of each year, no money may be distributed to a county by the department for the treatment, rehabilitation, and prevention of alcoholism if a county plan has not been approved by the department.

(5) The department may adopt rules regarding the submission, approval, and disapproval of plans.

History: En. Sec. 8, Ch. 711, L. 1979; amd. Sec. 1, Ch. 499, L. 1981.

Compiler's Comments

1981 Amendment: Changed "January 1, 1980" to "January 1 of each year" in (1); changed "December 31, 1979" to "January 1 of each year" in (4)(a); and changed "June 30, 1980" to "June 30 of each year" in (4)(b).

Statement of Intent: The statement of intent adopted with HB 844 (Ch. 711, L. 1979) provided in part: "Section 13 requires each county to submit a countywide plan to the department for the treatment, rehabilitation, and prevention of alcoholism and gives the department the authority to approve or disapprove of each plan.

It is intended that the rules adopted by the department with regard to the plans will:

(1) provide the procedure for the submission of the plan including the general format and the type of information needed by the department to evaluate the plan; and

(2) outline the criteria that the department will use in approving or disapproving a plan." The section 13 referred to in the statement of intent corresponds to section 8 of HB 844 as finally passed.

Part 3

Treatment of Alcoholics and Intoxicated Persons

53-24-301. Voluntary treatment of alcoholics. (1) An alcoholic may apply directly to an approved public treatment facility for voluntary treatment. If the proposed patient is a minor or an incompetent person, he, a parent, legal guardian, or other legal representative may make the application.

(2) Subject to rules adopted by the department, the administrator of an approved public treatment facility may determine who shall be admitted for treatment. If a person is refused admission to an approved public treatment facility, the administrator, subject to departmental rules, shall refer the person to another approved public treatment facility for treatment if possible and appropriate.

(3) If a patient receiving inpatient care leaves an approved public treatment facility, he shall be encouraged to consent to appropriate outpatient or intermediate treatment. If it appears to the administrator of the treatment facility that the patient is an alcoholic who requires help, the department shall arrange for assistance in obtaining supportive services and residential facilities.

(4) If a patient leaves an approved public treatment facility, with or against the advice of the administrator of the facility, the department shall make reasonable provisions for his transportation to another facility or to his home. If he has no home, he shall be assisted in obtaining shelter. If he is a minor or an incompetent person, the request for discharge from an inpatient facility shall be made by a parent, legal guardian, or other legal representative or by the minor or incompetent if he was the original applicant.

History: En. 69-6218 by Sec. 8, Ch. 302, L. 1974; Sec. 69-6218, R.C.M. 1947; redes. 80-2715 by Sec. 6, Ch. 280, L. 1975; R.C.M. 1947, 80-2715.

53-24-302. Involuntary commitment of alcoholics. (1) A person may be committed to the custody of the department by the district court upon the petition of his spouse or guardian, a relative, the certifying physician, or the chief of any approved public treatment facility. The petition shall allege that the person is an alcoholic who habitually lacks self-control as to the use of alcoholic beverages and that he has threatened, attempted, or inflicted physical harm on another and that unless committed is likely to inflict physical harm on another or is incapacitated by alcohol. A refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment. The petition shall be accompanied by a certificate of a licensed physician who has examined the person within 2 days before submission of the petition unless the person whose commitment is sought has refused to submit to a medical examination, in which case the fact of refusal shall be alleged in the petition. The certificate shall set forth the physician's findings in support of the allegations of the petition. A physician employed by the admitting facility or the department is not eligible to be the certifying physician.

(2) Upon filing the petition, the court shall fix a date for a hearing no later than 10 days after the date the petition was filed. A copy of the petition and of the notice of the hearing, including the date fixed by the court, shall be served on the petitioner, the person whose commitment is sought, his next of kin other than the petitioner, a parent or his legal guardian if he is a minor, the administrator in charge of the approved public treatment facility to which he has been committed for emergency care, and any other person the court believes advisable. A copy of the petition and certificate shall be delivered to each person notified.

(3) At the hearing the court shall hear all relevant testimony, including, if possible, the testimony of at least one licensed physician who has examined

the person whose commitment is sought. The person shall have a right to have a licensed physician of his own choosing examine him and testify on his behalf. If he has no funds with which to pay such physician, the reasonable costs of one such examination and testimony shall be paid by the county. The person shall be present unless the court believes that his presence is likely to be injurious to him. He shall be advised of his right to counsel, and if he is unable to hire his own counsel, the court shall appoint an attorney to represent him at the expense of the county. The court shall examine the person in open court or, if advisable, shall examine the person in chambers. If he refuses an examination by a licensed physician and there is sufficient evidence to believe that the allegations of the petition are true or if the court believes that more medical evidence is necessary, the court may make a temporary order committing him to the department for a period of not more than 5 days for purposes of a diagnostic examination.

(4) If after hearing all relevant evidence, including the results of any diagnostic examination by the department, the court finds that grounds for involuntary commitment have been established by clear and convincing evidence, it shall make an order of commitment to the department. It may not order commitment of a person unless it determines that the department is able to provide adequate and appropriate treatment for him and the treatment is likely to be beneficial.

(5) A person committed under this section shall remain in the custody of the department for treatment for a period of 30 days unless sooner discharged. At the end of the 30-day period, he shall automatically be discharged unless before expiration of the period the department obtains a court order from the district court of the committing district for his recommitment upon the grounds set forth in subsection (1) for a further period of 90 days unless sooner discharged. If a person has been committed because he is an alcoholic likely to inflict physical harm on another, the department shall apply for recommitment if after examination it is determined that the likelihood still exists.

(6) A person recommitted under subsection (5) who has not been discharged by the department before the end of the 90-day period shall be discharged at the expiration of that period unless before expiration of the period the department obtains a court order from the district court of the committing district on the grounds set forth in subsection (1) for recommitment for a further period not to exceed 90 days. If a person has been committed because he is an alcoholic likely to inflict physical harm on another, the department shall apply for recommitment if after examination it is determined that the likelihood still exists. Only two recommitment orders under subsections (5) and (6) are permitted.

(7) Upon the filing of a petition for recommitment under subsection (5) or (6), the court shall fix a date for hearing no later than 10 days after the date the petition was filed. A copy of the petition and of the notice of hearing, including the date fixed by the court, shall be served on the petitioner, the person whose commitment is sought, his next of kin other than the petitioner, the original petitioner under subsection (1) if different from the petitioner for recommitment, one of his parents or his legal guardian if he is a minor, and any other person the court believes advisable. At the hearing the court shall proceed as provided in subsection (3).

(8) A person committed to the custody of the department for treatment shall be discharged at any time before the end of the period for which he has been committed if either of the following conditions is met:

(a) in case of an alcoholic committed on the grounds of likelihood of infliction of physical harm upon another, that he is no longer in need of treatment or the likelihood no longer exists; or

(b) in case of an alcoholic committed on the grounds of incapacity and the need of treatment, that the incapacity no longer exists, further treatment will not be likely to bring about significant improvement in the person's condition, or treatment is no longer adequate or appropriate.

(9) The court shall inform the person whose commitment or recommitment is sought of his right to contest the application, be represented by counsel at every stage of any proceedings relating to his commitment and recommitment, and have counsel appointed by the court or provided by the court if he wants the assistance of counsel and is unable to obtain counsel. If the court believes that the person needs the assistance of counsel, the court shall require, by appointment if necessary, counsel for him regardless of his wishes. The person whose commitment or recommitment is sought shall be informed of his right to be examined by a licensed physician of his choice. If the person is unable to obtain a licensed physician and requests examination by a physician, the court shall employ a licensed physician.

(10) If a private treatment facility agrees with the request of a competent patient or his parent, sibling, adult child, or guardian to accept the patient for treatment, the department may transfer him to the private treatment facility.

(11) A person committed under this section may at any time seek to be discharged from commitment by writ of habeas corpus or other appropriate means.

(12) The venue for proceedings under this section is the place in which person to be committed resides or is present.

History: **En. 69-6221 by Sec. 11, Ch. 302, L. 1974; Sec. 69-6221, R.C.M. 1947; redes. 80-2718 by Sec. 6, Ch. 280, L. 1975; R.C.M. 1947, 80-2718.**

53-24-303. Treatment and services for intoxicated persons and persons incapacitated by alcohol. (1) An intoxicated person may come voluntarily to an approved public treatment facility for emergency treatment. A person who appears to be intoxicated in a public place and to be in need of help, if he consents to the proffered help, may be assisted to his home, an approved public treatment facility, an approved private treatment facility, or other health facility by the police.

(2) A person who appears to be incapacitated by alcohol shall be taken into protective custody by the police and forthwith brought to an approved public treatment facility for emergency treatment. If no approved public treatment facility is readily available, he shall be taken to an emergency medical service customarily used for incapacitated persons. The police, in detaining the person and in taking him to an approved public treatment facility, are taking him into protective custody and shall make every reasonable effort to protect his health and safety. In taking the person into protective custody, the detaining officer may take reasonable steps to protect

himself. No entry or other record may be made to indicate that the person taken into custody under this section has been arrested or charged with a crime.

(3) A person who comes voluntarily or is brought to an approved public treatment facility shall be examined by a licensed physician as soon as possible. He may then be admitted as a patient or referred to another health facility. The referring approved public treatment facility shall arrange for his transportation.

(4) A person who by medical examination is found to be incapacitated by alcohol at the time of his admission or to have become incapacitated at any time after his admission may not be detained at the facility once he is no longer incapacitated by alcohol or, if he remains incapacitated by alcohol, for more than 48 hours after admission as a patient unless he is committed under 53-24-304. A person may consent to remain in the facility as long as the physician in charge believes appropriate.

(5) A person who is not admitted to an approved public treatment facility and is not referred to another health facility may be taken to his home. If he has no home, the approved public treatment facility shall assist him in obtaining shelter.

(6) If a patient is admitted to an approved public treatment facility, his family or next of kin shall be notified as promptly as possible. If an adult patient who is not incapacitated requests that there be no notification, his request shall be respected.

History: En. 69-6219 by Sec. 9, Ch. 302, L. 1974; Sec. 69-6219, R.C.M. 1947; redes. 80-2716 by Sec. 6, Ch. 280, L. 1975; amd. Sec. 5, Ch. 414, L. 1977; R.C.M. 1947, 80-2716.

53-24-304. Emergency commitment of intoxicated persons and persons incapacitated by alcohol. (1) An intoxicated person who has threatened, attempted, or inflicted physical harm on another and is likely to inflict physical harm on another unless committed or a person who is incapacitated by alcohol may be committed to an approved public treatment facility for emergency treatment. A refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment.

(2) The certifying physician, spouse, guardian, or relative of the person to be committed or any other responsible person may make a written application for commitment under this section directed to the administrator of the approved public treatment facility. The application shall state facts to support the need for emergency treatment and be accompanied by a physician's certificate stating that he has examined the person sought to be committed within 2 days before the certificate's date and facts supporting the need for emergency treatment. A physician employed by the admitting facility or the department is not eligible to be the certifying physician.

(3) Upon approval of the application by the administrator of the approved public treatment facility, the person shall be brought to the facility by a peace officer, health officer, the applicant for commitment, the patient's spouse, the patient's guardian, or any other interested person. The person shall be detained at the facility to which he was admitted or transferred to another appropriate public or private treatment facility until discharged under subsection (5).

(4) The administrator of an approved public treatment facility shall refuse an application if in his opinion the application and certificate fail to sustain the grounds for commitment.

(5) When on the advice of the medical staff the administrator determines that the grounds for commitment no longer exist, he shall discharge a person committed under this section. No person committed under this section may be detained in any treatment facility for more than 5 days. If a petition for involuntary commitment under 53-24-302 has been filed within the 5 days and the administrator in charge of an approved public treatment facility finds that grounds for emergency commitment still exist, he may detain the person until the petition has been heard and determined, but no longer than 10 days after filing the petition.

(6) A copy of the written application for commitment and of the physician's certificate and a written explanation of the person's right to counsel shall be given to the person by the department within 24 hours after commitment. The department shall provide a reasonable opportunity for the person to consult counsel.

History: **En. 69-6220 by Sec. 10, Ch. 302, L. 1974; Sec. 69-6220, R.C.M. 1947; redes. 80-2717 by Sec. 6, Ch. 280, L. 1975; amd. Sec. 51, Ch. 37, L. 1977; amd. Sec. 6, Ch. 414, L. 1977; R.C.M. 1947, 80-2717; amd. Sec. 18, Ch. 38, L. 1979.**

53-24-305. Visitation and communication rights of patients. (1) Subject to reasonable rules regarding hours of visitation which the department may adopt, patients in any approved treatment facility shall be granted opportunities for adequate consultation with counsel and for continuing contact with family and friends consistent with an effective treatment program.

(2) Neither mail nor other communication to or from a patient in any approved treatment facility may be intercepted, read, or censored. The administrator may adopt reasonable rules regarding the use of telephone by patients in approved treatment facilities.

History: **En. 69-6223 by Sec. 13, Ch. 302, L. 1974; Sec. 69-6223, R.C.M. 1947; redes. 80-2720 by Sec. 6, Ch. 280, L. 1975; R.C.M. 1947, 80-2720.**

53-24-306. Records of alcoholics and intoxicated persons. (1) The registration and other records of treatment facilities shall remain confidential and are privileged to the patient.

(2) Notwithstanding subsection (1), the department may make available information from patients' records for purposes of research into the causes and treatment of alcoholism. Information under this subsection shall not be published in a way that discloses patients' names or other identifying information.

History: **En. 69-6222 by Sec. 12, Ch. 302, L. 1974; Sec. 69-6222, R.C.M. 1947; redes. 80-2719 by Sec. 6, Ch. 280, L. 1975; R.C.M. 1947, 80-2719.**

CHAPTERS 25 THROUGH 29

RESERVED

CHAPTER 30

CORRECTIONS

Part 1 — Adult Offenders
Montana State Prison

Section
53-30-101. Location and function of prison.

53-30-102. Qualifications of warden.
53-30-103. Working hours of prison employees.
53-30-104. Punishment of inmates.
53-30-105. Good time allowance.
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53-30-109. Management and control of intensive rehabilitation center.
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Part 2 — Youthful Offenders

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53-30-212. Commutation of sentence to state prison and transfer of prisoner to juvenile correctional facility.
53-30-213. University aid to residents of schools.
53-30-214. Apprehension and return of child leaving juvenile facility without permission.
53-30-215. Penalty for aiding resident in leaving juvenile facility.
Sections 53-30-216 through 53-30-225 reserved.
53-30-226. Youth aftercare agreement.
53-30-227. Control over minor released under aftercare agreement.
53-30-228. Detention of youth who violates aftercare agreement.
53-30-229. Hearing on alleged violation of aftercare agreement — right to appeal outcome.

Part 1

Adult Offenders — Montana State Prison

53-30-101. Location and function of prison. The institution at Deer Lodge is the state prison and as its primary function provides facilities for the custody, treatment, training, and rehabilitation of adult criminal offenders.

History: En. Sec. 24, Ch. 199, L. 1965; R.C.M. 1947, 80-1901.

53-30-102. Qualifications of warden. The warden of the state prison shall be a person trained through education and experience in directing a training, rehabilitation, or custodial program in a penal institution.

History: En. Sec. 25, Ch. 199, L. 1965; R.C.M. 1947, 80-1902.

53-30-103. Working hours of prison employees. A period of 8 hours in each period of 24 consecutive hours constitutes a day's work for all employees of the state prison. The staff of correctional personnel shall not work more than 40 hours or 5 days a week except in cases of riots, escapes, or other emergencies endangering health, life, or property.

History: En. Sec. 26, Ch. 199, L. 1965; amd. Sec. 1, Ch. 232, L. 1969; R.C.M. 1947, 80-1903.

53-30-104. Punishment of inmates. No barbarous punishments may be prescribed for an inmate of the state prison, nor shall an inmate, as punishment, be deprived of his normal provision of food while being compelled to work the usual number of hours per day.

History: En. Sec. 27, Ch. 199, L. 1965; R.C.M. 1947, 80-1904.

53-30-105. Good time allowance. (1) The department of institutions shall adopt rules providing for the granting of good time allowance for inmates employed in any prison work or activity. The good time allowance shall operate as a credit on his sentence as imposed by the court, conditioned upon the inmate's good behavior and compliance with the rules made by the department or the warden. The rules adopted by the department may not grant good time allowance to exceed:

(a) 10 days per month for inmates assigned to maximum, close, and medium I security classifications;

(b) 13 days per month for those classified as medium II and minimum security classifications;

(c) 15 days per month for inmates after having been assigned as medium II or minimum security for an uninterrupted period of 1 year;

(d) 13 days per month for those inmates enrolled in school who successfully complete the course of study or who while so enrolled are released from prison by discharge or parole;

(e) 3 days per month for those inmates participating in self-improvement activities designated by the department.

(2) In the event of an attempted escape by an inmate or a violation of the rules prescribed by the department or warden, the inmate may be punished by the forfeiture of part or all good time allowances. The warden of the state prison shall advise the department of any attempted escape or violation of rules on the part of the inmate. Any punishment by forfeiture of good time allowance must be approved by the department.

(3) A person may not earn good time under this section while he is on probation or parole.

History: En. Sec. 28, Ch. 199, L. 1965; amd. Sec. 1, Ch. 219, L. 1967; amd. Sec. 1, Ch. 113, L. 1974; amd. Sec. 1, Ch. 312, L. 1975; R.C.M. 1947, 80-1905; amd. Sec. 1, Ch. 588, L. 1981.

Compiler's Comments

1981 Amendment: Substituted security classifications in (1)(a) for inmates assigned "within the confines of the walls of the prison"; substituted the security classifications in (1)(b) for those "inmates placed outside the confines of the walls of the prison"; substituted the security classifications of (1)(c) for 15 days per month for "those inmates who have been assigned outside the walls of the prison for an uninterrupted period of 1 year on a minimum status"; deleted "inside the walls" after "enrolled in school" in (1)(d); deleted former subsection (1)(e) relating to good time for donating blood; decreased from 5 days to 3 days per month good time in (1)(e); rewrote (3) to reverse former law that stated the section applies to persons on, or eligible for, probation and parole; deleted provision in (3) prohibiting reduction of good time allowance for persons convicted or sentenced before April 1, 1955.

Interim Study Bill: House Bill 9 (Ch. 588, L. 1981) was the result of an interim study conducted by the Interim Committee on Corrections Policy reported in "Report and Recommendations of the Interim Committee on Corrections Policy and Facility Needs" published by the Montana Legislative Council, November 1980.

53-30-106. Contracts for confinement of inmates in other institutions. (1) When the state prison is inadequate to contain an inmate sentenced to confinement there, the department of institutions may enter into contracts with the federal government, other states, or the commissioners of counties that have suitable jails for confining inmates sentenced to the state prison.

(2) Within budgetary limits, the department may also enter into contracts with public or private corporations for the confinement of selected inmates where suitable programs have been established.

History: **En. Sec. 30, Ch. 199, L. 1965; R.C.M. 1947, 80-1907; amd. Sec. 1, Ch. 304, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "may" for "shall" before "enter into contracts" in (1); added subsection (2).

53-30-107. Establishment of intensive rehabilitation center authorized. Within the budgetary limits provided by law, the department of institutions may establish on property owned by the state on which prison facilities are or may be located a prison facility designed to segregate certain types of prisoners.

History: **En. Sec. 1, Ch. 221, L. 1969; amd. Sec. 54, Ch. 120, L. 1974; R.C.M. 1947, 80-1909.**

53-30-108. Standards of admission to intensive rehabilitation center. The facility shall be designated and known as the "intensive rehabilitation center" and shall be the place of custody for those male prisoners who in consideration of their age, type of crime for which committed, physical condition, behavior, attitude, and prospects of reformation are those most likely to benefit from such place of custody.

History: **En. Sec. 2, Ch. 221, L. 1969; R.C.M. 1947, 80-1910.**

53-30-109. Management and control of intensive rehabilitation center. The warden of the Montana state prison, subject to the supervision and control of the department of institutions, shall operate and manage such intensive rehabilitation center and shall make such rules for the operation, management, and admission to such center as may from time to time be necessary and desirable.

History: **En. Sec. 3, Ch. 221, L. 1969; R.C.M. 1947, 80-1911.**

53-30-110. Expense of trial for offenses committed in prison. Whenever a trial of any person takes place under any of the provisions of 45-7-306 and whenever a prisoner in the state prison is tried for any crime committed therein, the county clerk of the county where such trial is held shall make out a statement of all the costs incurred by the county for the trial of such case and of guarding and keeping such prisoner, properly certified by a district judge of said county, which statement shall be sent to the department of institutions for its approval. After such approval, the department must cause the amount of such costs to be paid out of the money appropriated for the support of the state prison to the county treasurer of the county where such trial was held.

History: **En. Sec. 226, Pen. C. 1895; re-en. Sec. 8228, Rev. C. 1907; re-en. Sec. 10872, R.C.M. 1921; Cal. Pen. C. Sec. 111; re-en. Sec. 10872, R.C.M. 1935; Sec. 94-4209, R.C.M. 1947; redes. 80-1912 and amd. by Sec. 27, Ch. 513, L. 1973; amd. Sec. 47, Ch. 37, L. 1977; R.C.M. 1947, 80-1912.**

53-30-111. Clothing and money furnished on discharge or parole. The state prison shall furnish suitable clothing to a discharged or paroled inmate. An inmate discharged and delivered to the custody of the federal government or another state shall receive $5; all other discharged or paroled inmates may receive "gate money" in an amount up to $100. The department of institutions may establish rules which allow it to deduct up to one-fourth of an inmate's wages earned under 53-1-301 and hold that money in a special account to be disbursed to the inmate when he is discharged or paroled. This amount shall be in addition to the "gate money".

History: En. Sec. 29, Ch. 199, L. 1965; amd. Sec. 1, Ch. 276, L. 1975; R.C.M. 1947, 80-1906; amd. Sec. 1, Ch. 438, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "may receive "gate money" in an amount up to $100" for "shall receive an amount not exceeding $25" after "paroled inmates" near the middle of the section; added the last sentence of the section; and made minor changes in phraseology.

Part 2

Youthful Offenders

53-30-201. Juvenile reception and evaluation center. The reception and evaluation center for children at the Galen state hospital, as established by law, shall be subject to the rules adopted and promulgated by the department of institutions and shall accept from the juvenile courts the temporary custody of children then being held on a charge under which the child could be adjudged a delinquent. For the period during which children are in the custody of the reception and evaluation center for children, it shall provide for them a residential program of care and study. The reception and evaluation center for children may not in any event detain or hold a child in custody for a period of time greater than 45 days. To assist the juvenile courts in making a decision regarding the child's disposition, the reception and evaluation center for children will forward recommendations to the court, to include but not limited to a psychiatric social summary, psychological evaluation, medical report, diagnostic school report, and a psychiatric report prepared by a consulting psychiatrist for those for whom this kind of evaluation is considered necessary. Transportation to and from the reception and evaluation center shall be provided by the county of such child's residence.

History: En. Sec. 20, Ch. 320, L. 1967; R.C.M. 1947, 80-1704.

53-30-202. Establishment of juvenile correctional facilities. The department of institutions, within the annual or biennial budgetary appropriation, may establish, maintain, and operate facilities to properly diagnose, care for, train, educate, and rehabilitate children in need of these services. The children must be 10 years of age or older and under 21 years of age. The facilities include but are not limited to the Mountain View school, the Pine Hills school, and the youth forest camp.

History: En. Sec. 8, Ch. 320, L. 1967; amd. Sec. 44, Ch. 120, L. 1974; amd. Sec. 44, Ch. 37, L. 1977; R.C.M. 1947, 80-1410.

53-30-203. Control and management of juvenile correctional facilities. The facilities provided for in 53-30-202 shall exercise their functions under the supervision and general management of the department of institutions. Except where otherwise provided by law, the department by rules shall establish standards of care, policies of admission, transfers, discharge, and aftercare supervision in order to provide adequate care for children and adequate service to the courts. The department shall develop special programs within each facility which are adaptable to the particular needs of its operation.

History: **En. Sec. 9, Ch. 320, L. 1967; amd. Sec. 45, Ch. 120, L. 1974; R.C.M. 1947, 80-1411.**

53-30-204. Cooperative agreements for services with governing body of Indian tribe. (1) The department of institutions may enter into agreements with the governing body of an Indian tribe within the state for residential and educational services at Mountain View school, Pine Hills school, aftercare division, or other juvenile facility maintained by the department for children who have been adjudicated delinquent by the tribal court, subject to the provisions of this part and parts 1 and 2 of chapter 1.

(2) Any agreement entered into under subsection (1) must also satisfy the requirements of Title 18, chapter 11.

History: **En. Sec. 1, Ch. 118, L. 1975; R.C.M. 1947, 80-1419; amd. Sec. 12, Ch. 309, L. 1981; amd. Sec. 177, Ch. 575, L. 1981.**

Compiler's Comments

1981 Amendments: Chapter 309 substituted "enter into agreements" for "contract" in (1); substituted "tribe" for "reservation" after "Indian" in (1); and added subsection (2).

Chapter 575 deleted former subsection (2) referring to the Montana children's center.

Preamble: The preamble to HB 25 (Ch. 309, L. 1981) provided: "WHEREAS, it is in the best interest of the State of Montana to establish a legal framework that will enable this state, its political subdivisions, and Indian tribes to achieve maximum harmony and facilitate cooperative efforts in the orderly administration of their respective governments; and

WHEREAS, it is in the best interest of the state of Montana to establish a legal framework for viable agreements between itself and tribal governments located in Montana that are based on mutual consent and mutual benefit; and

WHEREAS, it is in the best interest of the state of Montana to permit public agencies to make the most efficient use of their powers by enabling them to cooperate with tribal governments on a basis of mutual benefit and thereby provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of public agencies and local communities."

53-30-205. Youth forest camps and work programs. In the case of a youth forest camp, a work program shall be provided by the department of natural resources and conservation and shall be carried out with cooperation between that department and the camp superintendent.

History: **En. Sec. 10, Ch. 320, L. 1967; amd. Sec. 46, Ch. 120, L. 1974; R.C.M. 1947, 80-1412.**

53-30-206. Superintendents to manage facilities. Each facility provided for herein shall be under the immediate management and control of a superintendent.

History: **En. Sec. 46, Ch. 199, L. 1965; amd. Sec. 11, Ch. 320, L. 1967; R.C.M. 1947, 80-2202.**

53-30-207. Curricula at facilities. The academic and vocational curricula in facilities containing academic and vocational training shall include such academic and vocational subjects as are taught in the public schools of the state and shall conform to the standards set by the board of public education.

History: **En. Sec. 47, Ch. 199, L. 1965; amd. Sec. 12, Ch. 320, L. 1967; R.C.M. 1947, 80-2203.**

53-30-208. Maximum age of commitment. No child who has attained the age of 18 years shall be committed by any juvenile court to the Mountain View school, Pine Hills school, or other juvenile facility, except, however, that any person under 21 years who prior to attaining the age of 18 years came under the jurisdiction of the juvenile court by reason of delinquent conduct and whose adjudication of delinquency, including the finding that commitment to some institution was necessary, is not made until after the child reaches the age of 18 years shall be committed to the department of institutions. The department shall then have the obligation to test and evaluate the person to determine the proper place of detention for the person, who shall thereupon be confined at that institution until the person shall have attained the age of 21 years unless sooner discharged by the department.

History: En. Sec. 48, Ch. 199, L. 1965; amd. Sec. 13, Ch. 320, L. 1967; amd. Sec. 15, Ch. 262, L. 1969; R.C.M. 1947, 80-2204.

53-30-209. Medical examination before commitment — records required to accompany child committed. Before a child is committed to the Mountain View school, the Pine Hills school, or the department of institutions, he shall be examined by a licensed physician. A child committed to one of the schools or the department shall be accompanied by the order of commitment, a medical examination report, an adequate social history, and any school records.

History: En. Sec. 49, Ch. 199, L. 1965; amd. Sec. 14, Ch. 320, L. 1967; R.C.M. 1947, 80-2205.

53-30-210. Commitment expenses — arrangement for transportation. The expenses of committing a child to the Mountain View school, the Pine Hills school, or the department of institutions and transporting such child to the Mountain View school, the Pine Hills school, or the place designated by the department for it to receive custody and the expense of returning such child to the county of residence shall be borne by the county of residence. The district judge shall arrange for transportation of the child to the place where the department has directed that it will receive custody of such child.

History: En. Sec. 50, Ch. 199, L. 1965; amd. Sec. 15, Ch. 320, L. 1967; R.C.M. 1947, 80-2206.

53-30-211. Transfer of child to other facility or institution — notice. (1) The department of institutions upon recommendation of the superintendent of a facility may transfer a child resident in one of its juvenile facilities to any other facility or institution under the jurisdiction and control of the department.

(2) In the case of transfers of children in juvenile facilities to Warm Springs state hospital or Boulder River school and hospital and unless medical or psychiatric emergency exists, 15 days prior to the transfer the department shall send notice of the proposed transfer to the parents or legal guardian of the child and to the district court who committed the child. In the case of an emergency transfer, the department shall send notice within 72 hours after the time of transfer.

History: En. Sec. 53, Ch. 199, L. 1965; amd. Sec. 16, Ch. 320, L. 1967; R.C.M. 1947, 80-2209.

53-30-212. Commutation of sentence to state prison and transfer of prisoner to juvenile correctional facility. (1) Upon the application of a person under 21 years of age who has been sentenced to the state prison or upon the application of his parents or guardian, the governor may, after consulting with the department of institutions and with the approval of the board of pardons, commute the sentence by committing such person to the department until he is 21 years of age or until sooner placed or discharged.

(2) If such person's behavior after being committed to the department indicates that he is not a proper person to reside at one of the department's juvenile facilities, the governor, after consulting with the department and with the approval of the board of pardons, may revoke the commutation and return him to the state prison to serve out his unexpired term, and the time spent by him at one of the department's juvenile facilities or while a refugee from one of the department's juvenile facilities shall not be considered as a part of his original sentence.

(3) Upon recommendation of the warden and with the approval of the department, a person under 21 years of age who has been sentenced to the state prison may be transferred to any juvenile facility under the jurisdiction and control of the department.

(4) Upon recommendation of the warden and approval of a person sentenced to the state prison or application of a person sentenced to the state prison and approval of the warden and with the approval of the department, such person sentenced to the state prison who is 25 years of age or younger may be transferred to the Swan River youth forest camp. Upon such transfer such person shall be under the supervision and control of the facility to which he is transferred.

(5) If such person's behavior after transfer to such juvenile facility indicates he might be released on parole or his sentence be commuted and he be discharged from custody, the superintendent of such facility, with the approval of the department, may make an appropriate recommendation to the state board of pardons and the governor, who may, in their discretion, parole such person or commute his sentence.

(6) If such person's behavior after transfer to a juvenile facility indicates he is not a proper person to reside in such facility, upon recommendation of the superintendent and with the approval of the department, such person shall be returned to the state prison to serve out his unexpired term.

History: En. Sec. 54, Ch. 199, L. 1965; amd. Sec. 17, Ch. 320, L. 1967; amd. Sec. 1, Ch. 367, L. 1971; R.C.M. 1947, 80-2210; amd. Sec. 19, Ch. 38, L. 1979.

53-30-213. University aid to residents of schools. The department of institutions may on the recommendation of the superintendent authorize a resident of the Mountain View school or Pine Hills school who has completed high school and who is otherwise eligible to receive up to $800 per year toward his expenses incurred in attending a unit of the Montana university system. The money may be used for transportation, clothing, books, board, and room and shall be paid in the same manner as other expenses of the school. The Montana university system shall not charge any fees or tuition for these residents. No more than eight residents of each school may receive these benefits each year. The department shall notify the board of regents before August 1 of each year of the residents it has designated to receive the benefits for the forthcoming school year.

History: En. Sec. 57, Ch. 199, L. 1965; amd. Sec. 57, Ch. 120, L. 1974; R.C.M. 1947, 80-2213.

53-30-214. Apprehension and return of child leaving juvenile facility without permission. A child who has left a juvenile facility of the department of institutions without permission may be apprehended and returned by any citizen. The term "juvenile facility of the department" means any facility under the supervision and control of the department of institutions which has as its primary function the care, training, custody, and control of children and specifically includes the Pine Hills school for boys, the Mountain View school for girls, and the Swan River youth forest camp.

History: En. Sec. 55, Ch. 199, L. 1965; amd. Sec. 18, Ch. 320, L. 1967; amd. Sec. 1, Ch. 313, L. 1973; R.C.M. 1947, 80-2211; amd. Sec. 20, Ch. 38, L. 1979.

53-30-215. Penalty for aiding resident in leaving juvenile facility. A person who permits or assists a resident of any juvenile facility to leave a facility without permission or who furnishes or attempts to furnish to such a resident a tool, weapon, or other article with the intent of aiding him to leave without permission or who harbors or conceals a resident who has left without permission shall on conviction be punished by imprisonment for a term of not less than 6 months or more than 2 years or by a fine not exceeding $1,000 or by both such fine and imprisonment.

History: En. Sec. 56, Ch. 199, L. 1965; amd. Sec. 19, Ch. 320, L. 1967; R.C.M. 1947, 80-2212.

53-30-216 through 53-30-225 reserved.

53-30-226. Youth aftercare agreement. A youth released by the department of institutions from one of the state juvenile facilities to the supervision, custody, and control of the department shall, before his release, sign an aftercare agreement containing:

(1) a statement of the terms and conditions of his release, including a list of the acts which, if committed by the youth, may result in his return to the facility; and

(2) a statement that if the department or any person alleges any violation of the terms and conditions of the agreement, the youth is entitled to a hearing as provided for in 53-30-229 before he may be returned to the facility.

History: En. Sec. 1, Ch. 158, L. 1969; amd. Sec. 48, Ch. 120, L. 1974; amd. Sec. 1, Ch. 429, L. 1975; R.C.M. 1947, 80-1414(part).

53-30-227. Control over minor released under aftercare agreement. The department of institutions has control over a child released under 53-30-226 until he attains the age of 21 years, subject, however, to the general jurisdiction of the various courts of Montana for acts committed by the child while under the control of the department.

History: En. Sec. 2, Ch. 158, L. 1969; amd. Sec. 29, Ch. 94, L. 1973; amd. Sec. 49, Ch. 120, L. 1974; amd. Sec. 1, Ch. 15, L. 1975; R.C.M. 1947, 80-1415.

53-30-228. Detention of youth who violates aftercare agreement. A youth who violates the terms and conditions of his aftercare agreement may be detained by the department of institutions or by a law officer of the state, county, or city of the state upon certificates in writing to the officer by the department to the effect that the youth has violated the terms and conditions of his aftercare agreement.

History: **En. Sec. 3, Ch. 158, L. 1969; amd. Sec. 50, Ch. 120, L. 1974; amd. Sec. 3, Ch. 429, L. 1975; R.C.M. 1947, 80-1416.**

53-30-229. Hearing on alleged violation of aftercare agreement — right to appeal outcome. (1) When it is alleged by an aftercare counselor that a youth has violated the terms of his aftercare agreement, the youth shall be granted a hearing at the site of the alleged violation or in the county where the youth is residing or is found within 10 days after notice has been served on the youth or the youth is detained, whichever is earlier. The purpose of the hearing is to determine whether the youth committed the violation and, if so, whether the violation is of such a nature that he should be returned to the juvenile facility from which he was released or a different plan for treatment should be pursued by the department of institutions.

(2) The youth, upon advice of an attorney, may waive his right to a hearing.

(3) With regard to this hearing, the youth shall be given:

(a) written notice of the alleged violation of his aftercare agreement, including notice of the purpose of the hearing;

(b) disclosure of the evidence against him and the facts constituting the alleged violation;

(c) opportunity to be heard in person and to present witnesses and documentary evidence to controvert the evidence against him and to show that there are compelling reasons which justify or mitigate the violation;

(d) opportunity to have the referee subpoena witnesses;

(e) the right to confront and cross-examine adverse witnesses;

(f) the right to be represented by an attorney;

(g) a record of the hearing; and

(h) notice that a written statement as to the evidence relied upon in reaching the final decision and the reasons for the final decision will be provided by the referee.

(4) The department shall appoint a referee, who shall not be an employee of the department, to conduct the hearing. In the conduct of the hearing, the department may request the county attorney's assistance as necessary. The department shall adopt rules necessary to effect a prompt and full review.

(5) If the referee finds, by a preponderance of the evidence, that the youth did in fact commit the violation, he shall make a recommendation to the department for the placement of the youth. In making this recommendation, the referee may consider mitigating circumstances. Final approval rests with the department and must be made within 10 days of the referee's recommendation.

(6) The youth may appeal from the decision at the hearing to the district court of the county in which the hearing was held by serving and filing a notice of appeal with the court within 10 days of the department's decision. The youth may obtain a written transcript of the hearing from the department by giving written notice of appeal. The district court, upon receipt of a notice of appeal, shall order the department to promptly certify to the court a record of all proceedings before the department and shall proceed to

a prompt hearing on the appeal based upon the record on appeal. The decision of the department shall not be altered except for abuse of discretion or manifest injustice.

(7) Pending the hearing on a violation and pending the department's decision, a youth may not be detained except when his detention or care is required to protect the person or property of the youth or of others or he may abscond or be removed from the community. Procedures for taking into custody and detention of a youth charged with violation of his aftercare agreement shall be as provided in 41-5-302 and 41-5-306.

(8) If the decision is made to return the youth to the institution from which he was released and the youth appeals that decision, he shall await the outcome of the appeal at such institution.

History: **(1), (3) thru (7)En. 80-1414.1 by Sec. 2, Ch. 429, L. 1975; amd. Sec. 1, Ch. 231, L. 1977; Sec. 80-1414.1, R.C.M. 1947; (2)En. Sec. 1, Ch. 158, L. 1969; amd. Sec. 48, Ch. 120, L. 1974; amd. Sec. 1, Ch. 429, L. 1975; Sec. 80-1414, R.C.M. 1947; R.C.M. 1947, 80-1414(part), 80-1414.1; (8)En. Sec. 1, Ch. 242, L. 1979.**

TITLES 54 - 59

RESERVED

TITLE 60

HIGHWAYS AND TRANSPORTATION

Ch.
1. Highway Code.
2. State Administration.
3. Distribution and Apportionment of Highway Funds.
4. Acquisition and Disposition of Property.
5. Control of Access.
6. Highway Encroachments.
7. Livestock on Highways.
Chapters 8 through 10 reserved.
11. Rail Transportation.

CHAPTER 1

HIGHWAY CODE

Part 1 — General Provisions

Section
60-1-101. Legislative findings.
60-1-102. Legislative policy and intent.
60-1-103. General definitions.
60-1-104. Good Roads Day.

Part 2 — Classification of Highways

60-1-201. Classification — highways and roads.
60-1-202. Lewis and Clark highway.

Part 1

General Provisions

60-1-101. Legislative findings. The legislature recognizes that safe and efficient highway transportation is of important interest to all of the people of the state and declares that:

(1) inadequate highways, roads, and streets obstruct the free flow of traffic, increase costs of motor vehicle operation, endanger the health and safety of the citizens of the state, depreciate property values, and impede generally the economic progress of the state;

(2) the problems of establishing and maintaining adequate highways, roads, and streets, eliminating congestion, reducing accident frequency, providing parking facilities, and taking all necessary steps to insure safe and convenient transportation are urgent;

(3) adequate and integrated systems of highways, roads, and streets are essential to the general welfare of the state;

(4) providing adequate highway facilities is a proper public use and purpose, and this title is necessary for the preservation of the public peace, health, and safety, for the promotion of the general welfare, and as a contribution to the national defense.

History: En. Sec. 1, Ch. 197, L. 1965; R.C.M. 1947, 32-2201; amd. Sec. 1, Ch. 23, L. 1979.

60-1-102. Legislative policy and intent. Consistent with the foregoing determinations and declarations, the legislature intends:

(1) to place a high degree of trust in the hands of those officials whose duty it is, within the limits of available funds, to plan, develop, operate, maintain, and protect the highway facilities of this state for present as well as for future use;

(2) to make the department of highways custodian of the federal-aid and state highways and to impose similar responsibilities upon the boards of county commissioners with respect to county roads and upon municipal officials with respect to the streets under their jurisdiction;

(3) that the state shall have integrated systems of highways, roads, and streets and that the department of highways, the counties, and municipalities assist and cooperate with each other to that end;

(4) to provide sufficiently broad authority to enable the highway officials at all levels of government to function adequately and efficiently in all areas of their respective responsibilities, subject to the limitations of the constitution and the legislative mandate hereinafter imposed.

History: En. Sec. 2, Ch. 197, L. 1965; amd. Sec. 68, Ch. 316, L. 1974; R.C.M. 1947, 32-2202.

60-1-103. General definitions. Subject to additional definitions contained in this title which are applicable to specific chapters or sections and unless the context otherwise requires, terms are defined as follows:

(1) "Abandonment" means cessation of use of right-of-way (easement) or activity thereon with no intention to reclaim or use again (sometimes called vacation).

(2) "Commission" means the highway commission provided for in 2-15-2502.

(3) "Condemnation" means taking by exercise of the right of eminent domain.

(4) "Construction" means supervising, inspecting, actual building, and all expenses incidental to the construction or reconstruction of a highway, including locating, surveying, mapping, and costs of right-of-way or other interests in land and elimination of hazards at railway grade crossings.

(5) "Control of access" means the condition in which the right of owners or occupants of abutting land or other persons to access, light, air, or view in connection with a highway is fully or partially controlled by public authority.

(6) "County road" means any public highway opened, established, constructed, maintained, abandoned, or discontinued by a county in accordance with Title 7, chapter 14.

(7) "Department" means the department of highways provided for in Title 2, chapter 15, part 25.

(8) "Director" means the director of highways, a position provided for in 2-15-2501.

(9) "Easement" means a right acquired by public authority to use or control property for a designated purpose.

(10) "Eminent domain" means the right of the state to take private property for public use.

(11) "Federal-aid highway" means any public highway which is a portion of any of the federal-aid highway systems.

(12) "Federal-aid highway systems" means all of the systems named hereafter and their urban extensions.

(13) "Federal-aid interstate system" means that system of public highways selected by the commission in cooperation with adjoining states, subject to the approval of the secretary of commerce, as provided in Title 23, U.S.C.

(14) "Federal-aid primary system" means that system of connected public highways designated by the commission, subject to the approval of the secretary of commerce, as provided in Title 23, U.S.C.

(15) "Federal-aid secondary system" means that system of public highways not in the federal-aid primary or interstate systems selected by the commission in cooperation with the boards of county commissioners, subject to the approval of the secretary of commerce, as provided in Title 23, U.S.C.

(16) "Fee simple" means an absolute estate or ownership in property including unlimited power of alienation.

(17) "Highway" includes rights-of-way or other interests in land, embankments, retaining walls, culverts, sluices, drainage structures, bridges, railroad-highway crossings, tunnels, signs, guardrails, and protective structures.

(18) "Highway", "road", and "street", whether they appear together or separately or are preceded by the adjective "public", are general terms denoting a public way for purposes of vehicular travel and include the entire area within the right-of-way.

(19) "Highway authority" means the entity at any level of government authorized by law to construct and maintain highways.

(20) "Maintenance" means the preservation of the entire highway, including surface, shoulders, roadsides, structures, and such traffic-control devices as are necessary for its safe and efficient utilization.

(21) "Public highways" means all streets, roads, highways, bridges, and related structures which have been or shall be:

(a) built and maintained with appropriated funds of the United States or the state or any political subdivision thereof;

(b) dedicated to public use;

(c) acquired by eminent domain;

(d) acquired by adverse use by the public, jurisdiction having been assumed by the state or any political subdivision thereof.

(22) "Right-of-way" is a general term denoting land, property, or any interest therein, usually in a strip, acquired for or devoted to highway purposes.

(23) "State highway" means any public highway planned, laid out, altered, constructed, reconstructed, improved, repaired, maintained, or abandoned by the department.

(24) "Bridge" means any bridge constructed by the department, together with all appurtenances, additions, alterations, improvements, replacements, and the approaches thereto, lands used therefor, and improvements thereon.

History: En. Sec. 2-101, Ch. 197, L. 1965; amd. Sec. 69, Ch. 316, L. 1974; R.C.M. 1947, 32-2203(part); amd. Sec. 2, Ch. 23, L. 1979.

60-1-104. Good Roads Day. The third Tuesday in June is hereby designated "Good Roads Day". The governor may annually by public proclamation request the people of the state to contribute toward the improvement and safety of public highways.

History: En. Sec. 11-101, Ch. 197, L. 1965; R.C.M. 1947, 32-4401.

Part 2

Classification of Highways

60-1-201. Classification — highways and roads. (1) Public highways of this state are classified as follows:

(a) federal-aid highways;
(b) state highways;
(c) county roads;
(d) city streets.

(2) All highways which are not designated, selected, or established by the commission or constructed or maintained by the department are county roads or city streets.

(3) County roads are those opened, established, constructed, maintained, changed, abandoned, or discontinued by a county in accordance with Title 7, chapter 14.

(4) City streets are those public highways under the jurisdiction of municipal officials.

History: En. Sec. 3-101, Ch. 197, L. 1965; amd. Sec. 70, Ch. 316, L. 1974; R.C.M. 1947, 32-2301; amd. Sec. 3, Ch. 23, L. 1979.

60-1-202. Lewis and Clark highway. There is hereby established the Lewis and Clark highway. It shall be composed of the following existing routes:

(1) from the Idaho state line west of Lolo Hot Springs, Montana, to the junction with U.S. highway 93 at Lolo;
(2) thence north from Lolo on U.S. highway 93 to Missoula;
(3) thence east from Missoula on U.S. highways 12 and 10 to Garrison;
(4) thence east from Garrison on U.S. highway 12 through Forsyth and Baker to the North Dakota state line.

History: En. Sec. 3-102, Ch. 197, L. 1965; R.C.M. 1947, 32-2302.

CHAPTER 2

STATE ADMINISTRATION

Part 1 — Highway Commission

Section
60-2-101. Meetings.
60-2-102. Member's bond.
60-2-103. Rules.
60-2-104. Designation of federal-aid primary highways.
60-2-105. Designation of highways in state maintenance system.
60-2-106. Designation of highways not located entirely within the state.
60-2-107. Abandonment of highways.

Sections 60-2-108 through 60-2-110 reserved.
60-2-111. Letting of contracts on state and federal-aid highways.
60-2-112. Competitive bidding.
60-2-113. Bidder's security — contractor's bond.

Part 2 — Department of Highways General Powers and Duties

60-2-201. General powers of department.
60-2-202. Duties of department.
60-2-203. Maintenance responsibility.
60-2-204. Maintenance agreements with local governments.
60-2-205. Powers of department with respect to highways not located entirely within the state.
60-2-206. Compilation of statistics — investigation — consultation.
60-2-207. Agreements concerning analysis of effects of weight on highways.
60-2-208. Seeding along highways.
60-2-209. Description and plan of new highway or reconstructed or controlled-access facility.
60-2-210. Payment of construction and maintenance costs within municipalities.
60-2-211. Bypassing of municipalities — consent of municipal governing body.

Part 3 — Ports of Entry and Checking Stations

60-2-301. Ports of entry and checking stations authorized.
60-2-302. Checking stations required at major points of entry into state.
60-2-303. Cooperation in use of ports of entry and checking stations.

Chapter Compiler's Comments

Interim Study: HJR 56 (1981) requested a comprehensive interim study of the administration and operation of the department of highways and the highway commission. The Legislative Council designated the Joint Subcommittee on Highways to conduct the study.

Part 1

Highway Commission

60-2-101. Meetings. The highway commission shall meet at least once each month for the purpose of transacting business.

History: En. Sec. 4-104, Ch. 197, L. 1965; amd. Sec. 73, Ch. 316, L. 1974; R.C.M. 1947, 32-2404(2).

60-2-102. Member's bond. Each member of the highway commission shall give bond conditioned for the faithful performance of his duties in the sum of $10,000.

History: En. Sec. 4-104, Ch. 197, L. 1965; amd. Sec. 73, Ch. 316, L. 1974; R.C.M. 1947, 32-2404(1).

60-2-103. Rules. The commission may adopt rules necessary for its government.

History: En. Sec. 4-109, Ch. 197, L. 1965; amd. Sec. 11, Ch. 93, L. 1969; amd. Sec. 77, Ch. 316, L. 1974; R.C.M. 1947, 32-2409(1).

60-2-104. Designation of federal-aid primary highways. (1) The commission shall designate such public highways in the state as shall be classed as the federal-aid primary system.

(2) The commission shall, in cooperation with the board of county commissioners, select such public highways in the state as shall be classed as the

federal-aid secondary system, taking into consideration the traffic count on those highways, the continuity of the highways in relation to the state highway systems as they may connect or tie into a unified system of federal-aid highways, and the taxable valuations which are affected by those public highways.

(3) The commission shall, in cooperation with adjoining states, select the routes of the federal-aid interstate system.

(4) The commission shall designate such public highways in the state as shall be classed as state highways.

History: En. Sec. 4-107, Ch. 197, L. 1965; amd. Sec. 1, Ch. 201, L. 1967; amd. Sec. 75, Ch. 316, L. 1974; R.C.M. 1947, 32-2407(part).

60-2-105. Designation of highways in state maintenance system. The commission shall designate the following public highways in the state to be included in the state maintenance system:

(1) the federal-aid interstate system as defined by 60-1-103(13);

(2) the federal-aid primary system as defined by 60-1-103(14) and urban extensions thereto;

(3) those portions of the federal-aid secondary system defined by 60-1-103(15) and urban extensions thereto as are designated by the commission;

(4) other public highways or portions thereof not included within the systems above named which are designated by the commission.

History: En. 32-2407.1 by Sec. 1, Ch. 390, L. 1977; R.C.M. 1947, 32-2407.1.

60-2-106. Designation of highways not located entirely within the state. The commission may designate highways subject to improvement under the provisions of Title 23, U.S.C., even though those highways are not located entirely and continuously within the boundaries of the state. The designations shall meet the following conditions:

(1) the highway is on an approved federal-aid route and eligible for improvement under Title 23, U.S.C.;

(2) the location of a portion of the route outside the boundaries of the state is necessary because of natural geographical or physical conditions which make the construction of the highway within the state impossible or impracticable;

(3) the portion of the route located outside the state does not connect with and is not a part of the state highway system of the adjoining state.

History: En. Sec. 4-108, Ch. 197, L. 1965; amd. Sec. 76, Ch. 316, L. 1974; R.C.M. 1947, 32-2408(1); amd. Sec. 4, Ch. 23, L. 1979.

60-2-107. Abandonment of highways. The commission may abandon highways on the federal-aid systems and state highways.

History: En. Sec. 4-106, Ch. 197, L. 1965; amd. Sec. 74, Ch. 316, L. 1974; amd. Sec. 1, Ch. 283, L. 1977; R.C.M. 1947, 32-2406(part).

60-2-108 through 60-2-110 reserved.

60-2-111. Letting of contracts on state and federal-aid highways. All contracts for work on state and federal-aid highways, including portions in cities and towns, and all contracts entered into under 7-14-4108 shall be let by the commission. Except as otherwise specifically provided, the commission may enter such types of contracts and upon such terms as it may decide. All contracts shall meet the requirements of Title 18, chapter 2, part 4. When there is no prevailing rate of wages set by collective bargaining, the commission shall determine the prevailing rate to be stated in the contract.

History: **En. Sec. 9-101, Ch. 197, L. 1965; R.C.M. 1947, 32-4101.**

60-2-112. Competitive bidding. (1) When the estimated cost of any work exceeds $1,000, the commission shall let the contract by competitive bidding. Award shall be made upon such notice and upon such terms as the commission may prescribe by its rules. However, except when prohibited by federal law, the commission shall make awards and contracts in accordance with 18-1-102 and 18-1-112.

(2) If the commission finds that the work may be done in some more efficient manner, it need not let the contract by competitive bidding.

(3) If, on highway construction work financed in whole or in part by federal funds, the United States secretary of transportation affirmatively finds that under the circumstances relating to a particular project some method other than competitive bidding is in the public interest, the commission may enter into contracts with a board of county commissioners. These contracts may authorize each county to acquire rights-of-way for, survey, and construct farm-to-market, secondary, or feeder roads within the county by force account, unit price, or otherwise, as may be agreed by the commission and the board.

(4) If, on any highway construction work financed in whole or in part by federal funds, the commission finds that enforcement of the provisions contained in 15-50-203 and 18-2-311 relating to public contractors working beyond contract time will result in a reduction in the full benefits of Title 23, U.S.C., it may waive enforcement of such provisions.

History: **En. Sec. 9-102, Ch. 197, L. 1965; amd. Sec. l, Ch. 278, L. 1974; amd. Sec. 150, Ch. 316, L. 1974; R.C.M. 1947, 32-4102; amd. Sec. 5, Ch. 23, L. 1979.**

60-2-113. Bidder's security — contractor's bond. (1) Whenever the commission calls for competitive bidding, each bidder shall meet all requirements of Title 18, chapter 1, part 2.

(2) Every contractor awarded a contract by the commission shall meet all requirements set forth in Title 18, chapter 2, part 2. For the purposes of those sections with relation to contracts with the commission, a contract shall not be completed until the commission, while formally convened, affirmatively accepts all of the work thereunder.

History: **En. Sec. 9-103, Ch. 197, L. 1965; R.C.M. 1947, 32-4103.**

Part 2

Department of Highways — General Powers and Duties

60-2-201. General powers of department. (1) The department may plan, lay out, alter, construct, reconstruct, improve, repair, and maintain highways on the federal-aid systems and state highways.

(2) The department may cooperate and contract with counties and municipalities to provide assistance in performing these functions on other highways and streets.

(3) The department may review and approve projects for the installation of public works on state highway rights-of-way and authorize a county or municipality to let contracts related to such improvements.

(4) The department shall adopt necessary rules for the construction, repair, maintenance, and marking of state highways and bridges.

History: **(1) thru (3)En. Sec. 4-106, Ch. 197, L. 1965; amd. Sec. 74, Ch. 316, L. 1974; amd. Sec. 1, Ch. 283, L. 1977; Sec. 32-2406, R.C.M. 1947; (4)En. Sec. 4-107, Ch. 197, L. 1965; amd. Sec. 1, Ch. 201, L. 1967; amd. Sec. 75, Ch. 316, L. 1974; Sec. 32-2407, R.C.M. 1947; R.C.M. 1947, 32-2406(part), 32-2407(part); amd. Sec. 1, Ch. 324, L. 1979.**

60-2-202. Duties of department. The department shall:

(1) maintain and preserve the records of the commission in its office at the capitol;

(2) file and preserve copies of all plans, specifications, contracts, estimates, and official acts taken by it or by the commission;

(3) prepare and submit to the governor on or before the 15th day of each month a report of work constructed, under construction, and proposed for construction; the progress made during the preceding month; and recommendations for improvements and their estimated costs.

History: **En. Sec. 4-109, Ch. 197, L. 1965; amd. Sec. 11, Ch. 93, L. 1969; amd. Sec. 77, Ch. 316, L. 1974; R.C.M. 1947, 32-2409(2).**

60-2-203. Maintenance responsibility. The department shall have the responsibility for maintenance of all public highways or portions thereof that it maintained on July 1, 1976.

History: **En. 32-2402.2 by Sec. 2, Ch. 390, L. 1977; R.C.M. 1947, 32-2407.2.**

60-2-204. Maintenance agreements with local governments. The department may enter into an agreement with a local governing body to maintain portions of public highways within its boundaries upon such terms and conditions as may be agreed upon, provided that, in the case of highways in the state maintenance system as defined in 60-2-105 and 60-2-203:

(1) the department shall bear the entire cost of maintenance, operation, and construction work performed by the local governing body pursuant to these agreements; and

(2) the department is responsible for the entire cost of placement and maintenance of all traffic control devices involved in these agreements required by 61-8-203.

History: **En. 32-2402.3 by Sec. 3, Ch. 390, L. 1977; R.C.M. 1947, 32-2407.3; amd. Sec. 1, Ch. 411, L. 1979.**

60-2-205. Powers of department with respect to highways not located entirely within the state. The department may expend funds for the construction, reconstruction, engineering, administration, betterment, and maintenance of highways designated under 60-2-106. It may do all things necessary or required to carry out fully the cooperation contemplated under Title 23, U.S.C., with regard thereto.

History: **En. Sec. 4-108, Ch. 197, L. 1965; amd. Sec. 76, Ch. 316, L. 1974; R.C.M. 1947, 32-2408(2); amd. Sec. 6, Ch. 23, L. 1979.**

60-2-206. Compilation of statistics — investigation — consultation. (1) The department shall compile statistics regarding public highways throughout the state and collect all related information deemed expedient.

(2) It shall investigate various methods of construction adapted to different sections of the state and decide the best methods of construction and maintenance of highways, bridges, and road markers.

(3) The department may be consulted at all reasonable times by county officers having care and authority over highways and bridges and shall advise them on construction, repair, alteration, or maintenance.

(4) The department shall furnish such information and advice as may be requested by persons interested in the construction, maintenance, and marking of public highways. It shall at all times lend its aid in promoting highway improvement throughout the state.

History: En. Sec. 4-110, Ch. 197, L. 1965; amd. Sec. 78, Ch. 316, L. 1974; R.C.M. 1947, 32-2410.

60-2-207. Agreements concerning analysis of effects of weight on highways. (1) The department may contract with the United States or any state or group of states or agencies thereof or any nonprofit association, on a joint or cooperative basis, to study, analyze, or test the effects of weights on highways. Studies or tests shall seek solutions to the problems connected with the imposition of motor vehicle weights on highways.

(2) Studies or tests may be made either by designating existing highways or by constructing test strips, including natural resource roads.

History: En. Sec. 4-111, Ch. 197, L. 1965; amd. Sec. 79, Ch. 316, L. 1974; R.C.M. 1947, 32-2411.

60-2-208. Seeding along highways. (1) After a federal-aid or state highway is constructed, the department shall seed borrow pits, slopes, and shoulders to an adaptable perennial grass or combination of perennial grasses and legumes whenever establishment of perennial grass covers seem suitable. The seed shall be certified.

(2) The department shall seek joint recommendations and specifications as to time and method of seeding, fertilizing practices, and grass species from the Montana extension service, the experiment station, and the soil conservation service.

(3) After a right-of-way in open range has been fenced pursuant to 60-7-103, the department may seed the land within the fence to a grass which may be cropped for hay and may lease such lands or sell the right to take such hay to qualified persons.

History: En. Sec. 4-112, Ch. 197, L. 1965; amd. Sec. 6, Ch. 255, L. 1974; amd. Sec. 80, Ch. 316, L. 1974; R.C.M. 1947, 32-2412.

60-2-209. Description and plan of new highway or reconstructed or controlled-access facility. (1) Whenever the department establishes the location, width, and lines of any new, reconstructed, or proposed highway or the commission designates a road, street, or highway as a controlled-access facility, the department shall make a description and plan showing the centerline and the established width, the immediate boundary lines of all private property over, across, or through which the highway passes, the name of the owner of the property, the boundaries of that part of the private ownership included within the right-of-way of the highway, the parcel number assigned to that part of each ownership included within the highway right-of-way, together with the project number under which the highway is or is proposed to be constructed or reconstructed.

(2) Reference to the project number, parcel number, and section or quarter section, tract, block, or lot from which the same has been subdivided is a valid description of the parcel in all deeds given to or received from the state in which a parcel is transferred.

History: **En. Sec. 4-113, Ch. 197, L. 1965; amd. Sec. 1, Ch. 131, L. 1969; amd. Sec. 81, Ch. 316, L. 1974; R.C.M. 1947, 32-2413.**

60-2-210. Payment of construction and maintenance costs within municipalities. The department of highways shall pay the entire costs of construction of streets, curbs, gutters, and sidewalks and maintenance of streets, highways, curbs, and gutters which:

(1) are state highway routes; and

(2) are within incorporated municipalities.

History: **En. Sec. 1, Ch. 210, L. 1965; amd. Sec. 40, Ch. 316, L. 1974; R.C.M. 1947, 32-1627; amd. Sec. 1, Ch. 153, L. 1979.**

60-2-211. Bypassing of municipalities — consent of municipal governing body. (1) The department may not construct highway bypasses or highway relocation projects without prior consent of the governing body of an incorporated municipality when the bypasses or projects:

(a) are not part of the national system of interstate highways built under the National Defense Highway Act; and

(b) divert motor vehicles from an existing highway route through a municipality incorporated prior to January 1, 1965.

(2) The department shall notify the governing body of the municipality by certified mail that it proposes to bypass the municipality. A contract may not be let or work commenced until the governing body notifies the department of its consent or until the elapse of 60 days after the notice has been sent by the department to the municipality, whichever first occurs. The failure of the municipality to act and notify the department of its action within the 60-day period is implied consent to the bypass.

(3) Actual consent or refusal to bypass shall be in the form of a resolution duly adopted by a majority of the members of the governing body of the municipality.

(4) The governing body may not withdraw consent once the department has been notified of the consent.

History: **En. Sec. 2, Ch. 210, L. 1965; amd. Sec. 41, Ch. 316, L. 1974; R.C.M. 1947, 32-1628.**

Part 3

Ports of Entry and Checking Stations

60-2-301. Ports of entry and checking stations authorized. To augment and help make more efficient and effective the enforcement of certain laws of the state, the department shall establish temporary or permanent ports of entry or checking stations upon highways in the state at places which the department considers necessary and advisable.

History: **En. Sec. 1, Ch. 137, L. 1965; amd. Sec. 84, Ch. 316, L. 1974; R.C.M. 1947, 32-2419.**

60-2-302. Checking stations required at major points of entry into state. In addition to the power granted to it in 60-2-301, the department shall establish checking stations at convenient points on the major highways entering this state, and the checking stations shall be kept open at all times.

History: **En. Sec. 2, Ch. 137, L. 1965; amd. Sec. 85, Ch. 316, L. 1974; R.C.M. 1947, 32-2420.**

60-2-303. Cooperation in use of ports of entry and checking stations. The department shall cooperate with other agencies and political subdivisions of this state in the use of the ports of entry or checking stations so that maximum use can be made of the facilities in enforcement of the laws of this state.

History: **En. Sec. 3, Ch. 137, L. 1965; amd. Sec. 86, Ch. 316, L. 1974; R.C.M. 1947, 32-2421.**

CHAPTER 3

DISTRIBUTION AND APPORTIONMENT OF HIGHWAY FUNDS

Part 1 — Federal-Aid Funds

Section
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Part 1

Federal-Aid Funds

60-3-101. Assent to federal law. (1) The legislature, for and on behalf of the state, assents to the provisions of Title 23, U.S.C.

(2) The department may, for and on behalf of the state, enter into all contracts and agreements with the United States or any officer, department, or bureau thereof relating to the construction, reconstruction, repair, and maintenance of highways in the state.

(3) The department may make all rules necessary to comply with the provisions of the laws assented to and all other laws granting aid for public highways and to obtain for the state the full benefits of such laws.

(4) The department may do all other things necessary or required to carry out fully the cooperation contemplated by the acts of congress assented to.

History: En. Sec. 4-101, Ch. 197, L. 1965; amd. Sec. 71, Ch. 316, L. 1974; R.C.M. 1947, 32-2401; amd. Sec. 7, Ch. 23, L. 1979.

60-3-102. Purposes. The purposes of 60-3-102 through 60-3-105 are to:

(1) promote the safety, convenience, and enjoyment of travel on and protection of the public investment in the highways of this state;

(2) restore, preserve, and enhance scenic beauty within the right-of-way of and adjacent to the highways;

(3) entitle the state to receive and expend the 3% nonmatching funds from the United States under Title 23, United States Code.

History: En. Sec. 1, Ch. 286, L. 1967; amd. Sec. 87, Ch. 316, L. 1974; R.C.M. 1947, 32-2422.

60-3-103. Purposes for which federal funds to be expended. The department may expend funds apportioned to the state under 23 U.S.C. 319 for the following purposes:

(1) landscape and roadside development within the rights-of-way of federal-aid highways of this state;

(2) acquisition of interests in and improvement of strips of land necessary for the restoration, preservation, and enhancement of scenic beauty adjacent to the highways; and

(3) acquisition and development of publicly owned and controlled rest and recreation areas and sanitary and other facilities within or adjacent to federal-aid highway rights-of-way reasonably necessary to accommodate the traveling public.

History: En. Sec. 2, Ch. 286, L. 1967; amd. Sec. 88, Ch. 316, L. 1974; R.C.M. 1947, 32-2423; amd. Sec. 8, Ch. 23, L. 1979.

60-3-104. Extent of interest acquired. The department may acquire the fee simple or any lesser estate or interest as determined by it to be reasonably necessary to accomplish the purposes of 60-3-102 through 60-3-105. Acquisition may be made by gift, purchase, or exchange.

History: En. Sec. 3, Ch. 286, L. 1967; amd. Sec. 89, Ch. 316, L. 1974; R.C.M. 1947, 32-2424.

60-3-105. Expenditure of funds. The department shall expend only nonmatching funds authorized under 23 U.S.C. 319(b) in carrying out the authority granted by 60-3-102 through 60-3-104.

History: En. Sec. 4, Ch. 286, L. 1967; amd. Sec. 90, Ch. 316, L. 1974; R.C.M. 1947, 32-2425; amd. Sec. 9, Ch. 23, L. 1979.

Part 2

State Funds

60-3-201. Distribution and use of proceeds of gasoline dealers' license tax. (1) All money received in payment of license taxes under the Distributor's Gasoline License Tax Act, except those amounts paid out of the department of revenue's suspense account for gasoline tax refund, shall be used and expended as provided in this section. So much of that money on hand at any time as may be needed to pay highway bonds and interest thereon when due and to accumulate and maintain a reserve therefor, as provided in laws and in resolutions of the state board of examiners authorizing such bonds, shall be deposited in the highway bond account in the sinking fund established by 17-2-102. Subject to that provision, 9/10 of 1% of all money shall be deposited in the state park account and ½ of 1% of all money shall be deposited in a snowmobile account in the earmarked revenue fund. The remainder of the money shall be used by the department of highways on the federal-aid highways in this state selected and designated under Title 23, U.S.C., and on highways leading from each county seat in the state to the federal highway system of federal-aid roads where the county seat is not on the system and on the other roads which have been or may be authorized by the laws of Montana and for collection of the license taxes and the enforcement of the Montana highway code under Article VIII, section 6, of the constitution of this state.

(2) The department shall, in expending this money, carry forward construction from year to year, using the money expended through the matching up of federal-aid allotments to Montana upon the federal highway system in the various parts of the state in accordance with 60-3-204 through 60-3-206. Nothing in this title conflicts with Title 23, U.S.C., and the rules by which it is administered.

(3) The department may enter into cooperative agreements with the national park service and the federal highway administration for the purpose of maintaining national park approach roads in Montana.

(4) Money credited to the state park account in the earmarked revenue fund shall be used only for the creation, improvement, and maintenance of state parks where motorboating is allowed, except for the payment of refunds under 15-70-221 through 15-70-226. The legislature finds that of all the fuel

sold in the state for consumption in internal combustion engines, not less than 9/10 of 1% is used for propelling boats on waterways of this state.

(5) Money credited to the snowmobile account may be used only to develop and maintain facilities open to the general public at no admission cost and to promote snowmobile safety. For the 2 years following July 1, 1977, 15% of the amount deposited in the snowmobile fund each year shall be used to promote snowmobile safety. Thereafter, 10% of the amount deposited in the snowmobile fund shall be used to promote snowmobile safety. The legislature finds that of all fuels sold in this state for consumption in internal combustion engines, not less than ½ of 1% is used for propelling snowmobiles on public lands of this state.

History: En. Sec. 4-301, Ch. 197, L. 1965; amd. Sec. 1, Ch. 251, L. 1967; amd. Sec. 6, Ch. 356, L. 1971; amd. Sec. 13, Ch. 100, L. 1973; amd. Sec. 94, Ch. 316, L. 1974; amd. Sec. 8, Ch. 477, L. 1975; amd. Sec. 1, Ch. 372, and Sec. 1, Ch. 382, L. 1977; R.C.M. 1947, 32-2601; amd. Sec. 10, Ch. 23, L. 1979; amd. Sec. 1, Ch. 607, L. 1979.

60-3-202. Funding highway system maintenance. For the purpose of funding the increased cost of maintaining the state highway system as designated in 60-2-105, ¼ cent per gallon of the special fuel tax collected under 15-70-321 and ¼ cent per gallon of the gasoline license tax collected under 15-70-204 are allocated therefor.

History: En. 32-2407.4 by Sec. 6, Ch. 390, L. 1977; R.C.M. 1947, 32-2407.4.

60-3-203. Districts for apportionment of department funds. All money available to the department for highway construction purposes shall be apportioned among these financial districts, each composed of the counties named:

District 1. Lincoln, Flathead, Lake;
District 2. Glacier, Toole, Liberty, Hill, Blaine;
District 3. Phillips, Valley, Daniels, Sheridan, Roosevelt;
District 4. McCone, Richland, Dawson, Prairie, Wibaux;
District 5. Fergus, Garfield, Petroleum;
District 6. Pondera, Teton, Chouteau, Cascade, Judith Basin;
District 7. Lewis and Clark, Jefferson, Broadwater;
District 8. Sanders, Mineral, Missoula, Ravalli, Granite, Powell;
District 9. Beaverhead, Deer Lodge, Silver Bow, Madison;
District 10. Park, Gallatin, Sweet Grass, Meagher, Wheatland;
District 11. Golden Valley, Musselshell, Stillwater, Yellowstone, Carbon, Big Horn, Treasure;
District 12. Rosebud, Custer, Fallon, Powder River, Carter.

History: En. Sec. 4-306, Ch. 197, L. 1965; amd. Sec. 95, Ch. 316, L. 1974; R.C.M. 1947, 32-2603.

60-3-204. Apportionment of state construction funds. Each fiscal year the department shall apportion available state construction funds to the various federal-aid highway systems which are required to match the amounts of federal aid available for obligation on each respective system. The state's share of the cost of final judgments in court awards made to construction contractors on state highway construction projects during the previous fiscal year may be deducted from funds available prior to the apportionments provided in this section, and this cost shall be credited to the accounts of the highway system, financial district, county, or urban city involved as an offset to the charges made to the accounts as a result of the final judgment. The deductions may be made only when the amount of these judgments would prohibit or seriously impair the highway construction program in a financial district, county, or urban city.

History: **En. Sec. 4-308, Ch. 197, L. 1965; amd. Sec. 1, Ch. 283, L. 1971; amd. Sec. 97, Ch. 316, L. 1974; amd. Sec. 1, Ch. 31, L. 1975; R.C.M. 1947, 32-2605; amd. Sec. 1, Ch. 22, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "obligation" for "expenditure" near end of first sentence.

60-3-205. Apportionment of state funds to federal-aid primary highway system. (1) Each fiscal year the department shall determine the amount of incompleted mileage of the federal-aid primary system within each of the financial districts. As a basis for determination of incompleted mileage, the department shall compare the present condition of the system with the latest approved state standards. Any mileage failing to meet those standards shall be included in the determination as partially completed. The proportion of completion shall be determined by estimating the amount of work which must be performed to complete the highway.

(2) The department shall then compute the ratio between the incompleted mileage in each district and the total incompleted mileage of the federal-aid primary system in the state.

(3) The department shall then apportion available state construction funds to the federal-aid primary system in each district on the basis of the computed ratio.

History: **En. Sec. 4-309, Ch. 197, L. 1965; amd. Sec. 98, Ch. 316, L. 1974; amd. Sec. 2, Ch. 31, L. 1975; R.C.M. 1947, 32-2606.**

60-3-206. Apportionment of state funds to federal-aid secondary highway system. (1) Each fiscal year the department shall apportion available state construction funds for the federal-aid secondary highway system among the financial districts. The proportion which each district shall receive shall be computed on the following basis:

(a) one-fourth in the ratio of land area in each district to the total land area in the state;

(b) one-fourth in the ratio of the rural population in each district to the total rural population in the state;

(c) one-fourth in the ratio of the rural road mileage in each district to the total rural road mileage in the state;

(d) one-fourth in the ratio of value of rural lands in each district to the total value of rural lands in the state.

(2) Funds apportioned to each district shall be further apportioned to each county in the district on the same basis, considering ratios of land area, rural population, rural road mileage, and value of rural lands. To the extent necessary to permit orderly programming and construction of projects, obligations in any county may exceed the amount apportioned to that county to the extent of three times the amount of the last apportionment to the county. The amount of any excess obligations shall be deducted from future apportionments to that county.

(3) For the purposes of this section, terms are defined as follows:

(a) "Rural population" means total population less the population in cities over 5,000 persons and their unincorporated fringe urban areas as reported in the latest federal census. Federal census population figures shall be adjusted in the interim between censuses in accordance with the percentage of change in annual motor vehicle registration figures for each county.

(b) "Rural road mileage" means all road mileage outside of incorporated cities, exclusive of road mileage on the federal-aid primary highway system and the federal-aid interstate system. Rural road mileage reported by the road inventory of the department shall be used in determining rural road mileage.

(c) "Value of rural lands" includes the value of state-owned lands from which the state derives grazing, timber, and agricultural income.

(i) The basis for the value of rural lands shall be computed from the latest biennial report of the department of revenue.

(ii) The basis for the value of state-owned lands shall be computed from the latest figures on the total grazing, timber, and agricultural lands in each county contained in the latest biennial report of the department of state lands.

(iii) The average value of privately owned lands shall be the average value of state-owned lands if the actual value is not available.

History: **En. Sec. 4-310, Ch. 197, L. 1965; amd. Sec. 12, Ch. 391, L. 1973; amd. Sec. 99, Ch. 316, L. 1974; amd. Sec. 3, Ch. 31, L. 1975; R.C.M. 1947, 32-2607; amd. Sec. 2, Ch. 22, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "obligations" for "expenditures" in the last two sentences of (2).

60-3-207. Secondary highway information. On or before November 30 of each year, the department shall inform each board of county commissioners of:

(1) the total amount of secondary highway funds and the amount apportioned to each county;

(2) the location of proposed secondary highway projects, when the information is available;

(3) any other matters regarding secondary highway construction which the department considers advisable and of interest to the counties.

History: **En. Sec. 4-311, Ch. 197, L. 1965; amd. Sec. 100, Ch. 316, L. 1974; R.C.M. 1947, 32-2608; amd. Sec. 3, Ch. 22, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "November 30" for "August 30" in the first sentence.

60-3-208. Apportionment of state funds to federal-aid off-system roads. (1) Each fiscal year the department of highways shall apportion to each county available state construction funds for the purpose of matching federal-aid off-system road funds. Such apportionment shall be made in the same manner and on the same basis as provided in 60-3-206.

(2) The board of county commissioners shall, in proposing projects to be constructed with off-system road funds, consult with the governing body of those cities with a population under 5,000 persons located within the county.

(3) To permit orderly programming and construction of projects, obligations by a county may exceed the amount of off-system road funds available to that county by no more than 300%. The amount of the excess expenditures shall be deducted from the future off-system road funds available to that county.

History: **En. 32-2607.1 by Sec. 1, Ch. 79, L. 1977; R.C.M. 1947, 32-2607.1; amd. Sec. 1, Ch. 35, L. 1979; amd. Sec. 4, Ch. 22, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "obligations" for "expenditures" in (3).

60-3-209. Apportionment of state funds to federal-aid interstate highway system. (1) Each fiscal year the department shall apportion available state construction funds for the federal-aid interstate highway system among the financial districts.

(2) The apportionment shall be based upon the ratio between the estimated cost of constructing or reconstructing the system in each district and the estimated cost of constructing or reconstructing the entire system within the state.

(3) The cost estimates to be used shall be those developed by the department in accordance with Title 23, U.S.C.

History: **En. Sec. 4-312, Ch. 197, L. 1965; amd. Sec. 101, Ch. 316, L. 1974; amd. Sec. 4, Ch. 31, L. 1975; R.C.M. 1947, 32-2609; amd. Sec. 11, Ch. 23, L. 1979.**

60-3-210. Increases in obligations. (1) The department may increase the obligations made in a financial district to the extent of:

(a) 25% more than the amount of money allocated to the district in the latest year for the federal-aid primary system or the federal-aid secondary system;

(b) 300% more than the amount of money allocated to the district in the latest year for the federal-aid interstate highway system.

(2) The allocation of available state construction funds to a district for the next succeeding fiscal year shall be decreased by an amount equal to any increased obligations.

History: **En. Sec. 4-313, Ch. 197, L. 1965; amd. Sec. 1, Ch. 290, L. 1973; amd. Sec. 102, Ch. 316, L. 1974; amd. Sec. 1, Ch. 318, L. 1974; R.C.M. 1947, 32-2610; amd. Sec. 5, Ch. 22, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "obligations" for "expenditures" in the first sentence and at the end of (2).

60-3-211. Apportionment of state funds to federal-aid urban highways. (1) Each fiscal year the department shall apportion state construction funds available for matching federal-aid urban funds to the cities in the state over 5,000 population in the ratio of urban population in each city to the total urban population in all cities in the state over 5,000 population.

(2) For the purpose of this section, "urban population" is defined as population within the incorporated limits of cities over 5,000 population and that population within unincorporated urban fringe areas delineated and reported in the latest federal census.

(3) To the extent necessary to permit orderly programming and construction of projects, obligations in any city may exceed the amount apportioned to that city. The amount of any excess obligations shall be deducted from future apportionments to that city.

History: En. Sec. 4-314, Ch. 197, L. 1965; amd. Sec. 103, Ch. 316, L. 1974; amd. Sec. 5, Ch. 31, L. 1975; R.C.M. 1947, 32-2611; amd. Sec. 6, Ch. 22, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "obligations" for "expenditures" twice in (3).

60-3-212. Interim apportionment to match federal-aid funds. During the interim between legislative sessions, the department of highways is delegated power and authority to develop formulas to apportion state construction funds in an equitable manner consistent with the intent of this title to match federal-aid funds for highway systems or purposes not enumerated in this title. Such apportionment formulas shall be valid only until approved, modified, or rejected by the next legislative session.

History: En. 32-2612 by Sec. 1, Ch. 402, L. 1973; R.C.M. 1947, 32-2612; amd. Sec. 12, Ch. 23, L. 1979.

60-3-213. Allocation for safety construction programs. (1) Each fiscal year the department of highways shall allocate available state construction funds to match federal-aid highway funds made available by the Federal-Aid Highway Act of 1973 for the following safety construction programs:

(a) rail-highway crossings;
(b) high-hazard locations;
(c) elimination of roadside obstacles;
(d) safer roads demonstration; and
(e) pavement marking demonstration.

(2) Such allocation shall be made from available state construction moneys before the apportionments provided for in 60-3-205, 60-3-206, and 60-3-211.

History: En. 32-2613 by Sec. 1, Ch. 216, L. 1974; amd. Sec. 6, Ch. 31, L. 1975; R.C.M. 1947, 32-2613.

60-3-214. Construction or reconstruction of bridges. (1) The department may allocate from state construction moneys available for the federal-aid highway system up to $1 million in any fiscal year for the construction or reconstruction of any major bridge or system of bridges on the primary or secondary highway systems. This may be done only when the use of regularly apportioned funds would prohibit or seriously delay the orderly and necessary highway construction program in the financial districts.

(2) When the department, as a part of its finding of public necessity, declares that a particular bridge should be constructed or reconstructed on a designated portion of the primary or secondary highway, the allocation may be made. The allocation may be obligated to:

(a) primary bridges when the department's estimate of the cost of construction or reconstruction is in excess of $500,000;

(b) secondary bridges when the department's estimate of the state's share of the cost of construction or reconstruction is in excess of the total estimated future regular apportionment of state construction moneys to the federal-aid secondary system of the county or counties for a period of 3 years.

(3) The allocation shall be made from available state construction moneys for the primary system before the apportionment in 60-3-205 and for the secondary system before the apportionment in 60-3-206.

(4) The department may allocate from state construction money available for the federal-aid highway system money to construct a bridge located outside the boundaries of Montana if it determines, after an economic analysis of the cost of construction and maintenance of the bridge and the roads that adjoin it, that it is more economical to construct the bridge at such location than at a location within the boundaries of Montana and if another state participates in the funding of the project.

History: En. Sec. 4-307, Ch. 197, L. 1965; amd. Sec. 96, Ch. 316, L. 1974; R.C.M. 1947, 32-2604; amd. Sec. 7, Ch. 22, L. 1981; amd. Sec. 1, Ch. 38, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 22 substituted "obligated to" for "expended on" in (2). Chapter 38 added subsection (4).

60-3-215. Replacement of bridges. (1) Whenever funds are made available under Title 23, U.S.C., for the replacement of bridges, the department may allocate from state construction money such money as is necessary to match the available federal funds. Such allocation shall be made from available state construction money before the apportionments provided for in 60-3-205, 60-3-206, and 60-3-211.

(2) Whenever such state construction money is so allocated, the amount allocated may not be deducted from future apportionments to the financial district or city.

History: En. 32-2614 by Sec. 1, Ch. 102, L. 1974; amd. Sec. 1, Ch. 78, L. 1977; R.C.M. 1947, 32-2614; amd. Sec. 13, Ch. 23, L. 1979.

60-3-216 through 60-3-220 reserved.

60-3-221. Priority primary routes defined. For the purposes of 60-3-221 through 60-3-225, "priority primary routes" are defined as those high-traffic sections of highways on the federal-aid primary system which connect to the interstate system.

History: En. 32-2615 by Sec. 1, Ch. 106, L. 1974; R.C.M. 1947, 32-2615; amd. Sec. 14, Ch. 23, L. 1979.

60-3-222. Selection of routes. Such routes shall be selected by the department in consultation with appropriate local officials, subject to the approval of the secretary of transportation, for priority of improvement to supplement the service provided by the interstate system by furnishing needed, adequate traffic collection and distribution facilities.

History: En. 32-2616 by Sec. 2, Ch. 106, L. 1974; R.C.M. 1947, 32-2616.

60-3-223. Allocation of funds. Annually, beginning July 1, 1974, and at the beginning of each fiscal year thereafter, the department shall allocate available state construction funds for matching federal-aid priority primary route funds. Such allocation shall be made from available state construction moneys before the apportionments provided for in 60-3-205, 60-3-206, and 60-3-211.

History: **En. 32-2617 by Sec. 3, Ch. 106, L. 1974; R.C.M. 1947, 32-2617.**

60-3-224. Apportionment of funds. Each fiscal year the department shall apportion available state construction funds among the approved priority primary routes. This apportionment shall be based on the ratio between the estimated cost of constructing or reconstructing each selected route and the estimated cost of constructing or reconstructing all then-approved priority primary routes.

History: **En. 32-2618 by Sec. 4, Ch. 106, L. 1974; amd. Sec. 7, Ch. 31, L. 1975; R.C.M. 1947, 32-2618.**

60-3-225. Excess obligations. To the extent necessary to permit orderly programming and construction of projects, obligations on any route may exceed the amount apportioned to that route. The amount of any such excess obligations shall be deducted from future apportionments to that route.

History: **En. 32-2619 by Sec. 5, Ch. 106, L. 1974; R.C.M. 1947, 32-2619; amd. Sec. 8, Ch. 22, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "obligations" for "expenditures" twice.

60-3-226 through 60-3-230 reserved.

60-3-231. Economic growth center defined. For the purposes of 60-3-231 through 60-3-234, an "economic growth center" is defined as an area of population of less than 100,000 which has been recommended for designation as such by the governor of Montana and approved by the secretary of transportation of the United States.

History: **En. 32-2620 by Sec. 1, Ch. 105, L. 1974; R.C.M. 1947, 32-2620; amd. Sec. 15, Ch. 23, L. 1979.**

60-3-232. Department of highways to determine centers. For the purposes of 60-3-231 through 60-3-234, the department of highways is authorized to determine and delineate the area influenced by designated economic growth centers. In so doing, it shall take into account relevant geographic, economic, educational, and recreational factors. The department is also authorized to determine and delineate those portions of existing highways which need to be upgraded to accommodate the existing and future needs of the traveling public.

History: **En. 32-2621 by Sec. 2, Ch. 105, L. 1974; R.C.M. 1947, 32-2621; amd. Sec. 16, Ch. 23, L. 1979.**

60-3-233. Allocation of funds. Each fiscal year the department shall allocate available state construction funds to match federal-aid highway funds made available for economic growth center development highways. Such allocation shall be made from available state construction moneys before the apportionments provided in 60-3-205, 60-3-206, and 60-3-211.

History: **En. 32-2622 by Sec. 3, Ch. 105, L. 1974; amd. Sec. 8, Ch. 31, L. 1975; R.C.M. 1947, 32-2622.**

60-3-234. Apportionment of funds. Each fiscal year the department shall apportion state construction funds among the approved economic growth centers as follows:

(1) The allocation for the 1974 fiscal year shall be the ratio of the number of miles of highways that need upgrading in existence on July 1, 1973, on the primary and urban systems in each approved growth center's area of influence to the total number of miles that need upgrading in all approved growth centers' area of influence.

(2) Thereafter, the allocation shall be in the ratio of the number of miles that need upgrading in existence on July 1 of a fiscal year on the primary, secondary, and urban systems in each approved growth center's area of influence to the total number of miles that need upgrading in all approved growth centers' area of influence.

(3) To the extent necessary to permit orderly programming and construction of projects, obligations in any approved growth center may exceed the amount apportioned to the growth center. The amount of any such excess obligations shall be deducted from future apportionments to that growth center.

History: En. 32-2623 by Sec. 4, Ch. 105, L. 1974; amd. Sec. 9, Ch. 31, L. 1975; R.C.M. 1947, 32-2623; amd. Sec. 9, Ch. 22, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "obligations" for "expenditures" twice in (3).

Part 3

Footpaths and Bicycle Trails

60-3-301. Short title. This part may be cited as the "Montana Footpath and Bicycle Trail Act of 1975".

History: En. 32-2624 by Sec. 1, Ch. 544, L. 1975; R.C.M. 1947, 32-2624; amd. Sec. 17, Ch. 23, L. 1979.

60-3-302. Bicycle trail defined. As used in this part, "bicycle trail" means a publicly owned and maintained lane or way designated and signed for use as a bicycle route.

History: En. 32-2625 by Sec. 2, Ch. 544, L. 1975; R.C.M. 1947, 32-2625.

60-3-303. Footpaths and bicycle trails to be established — funding. (1) Out of the funds received by the highway commission or by any county or city from the state highway commission earmarked revenue fund, reasonable amounts shall be expended as necessary for the establishment of footpaths and bicycle trails. Footpaths and bicycle trails may be established and extended to the nearest city or town or termination point of the highway or road wherever a highway, road, or street is being constructed, reconstructed, or relocated. In addition, footpaths and bicycle trails shall be established along all streets under state jurisdiction. Funds received from the earmarked revenue fund may also be expended to maintain footpaths and bicycle trails along other highways, roads, and streets and in parks and recreation areas where the construction would enhance traffic safety and convenience. Footpaths and bicycle trails shall be constructed along all sections of the national defense interstate highway system within a reasonable time after the completion of that system.

(2) Footpaths and trails are not required to be established under subsection (1) of this section:

(a) if the cost of establishing the paths and trails would be excessively disproportionate to the need or probable use; or

(b) where sparsity of population, other available ways, or other factors indicate an absence of any need for the paths and trails.

(3) The amount expended by the state highway commission or by a city or county as required or permitted by this section shall never in any one fiscal year be less than ¾ of 1% of the amount appropriated to the department of highways from the earmarked revenue fund for the construction program, maintenance program, and preconstruction program.

History: En. 32-2626 by Sec. 3, Ch. 544, L. 1975; R.C.M. 1947, 32-2626; amd. Sec. 18, Ch. 23, L. 1979.

60-3-304. Duties of department of highways. (1) The establishment of paths and trails and the expenditure of funds as authorized by this part are for the promotion of traffic safety on the highways, roads, and streets of the state. The highway commission shall, when requested, provide technical assistance and advice to cities and counties in carrying out the purpose of this part.

(2) The department of highways shall recommend construction standards for footpaths and bicycle trails. The department shall provide a uniform system of signing footpaths and bicycle trails which shall apply to paths and trails under the jurisdiction of the commission and cities and counties. The commission and cities and counties shall restrict the use of footpaths and bicycle trails under their jurisdiction to pedestrians and nonmotorized vehicles to the maximum possible extent, except that the commission, in cooperation with local governments, may authorize the operation of snowmobiles on designated portions of bicycle trails and footpaths when snow conditions permit.

History: En. 32-2627 by Sec. 4, Ch. 544, L. 1975; R.C.M. 1947, 32-2627.

CHAPTER 4

ACQUISITION AND DISPOSITION OF PROPERTY

Part 1 — Acquisition of Property

Section
60-4-101. Rights acquired by public in highway.
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Part 1

Acquisition of Property

60-4-101. Rights acquired by public in highway. By taking or accepting land for a highway, the public may acquire either a fee simple or any lesser estate or interest.

History: **En. Sec. 8-101, Ch. 197, L. 1965; R.C.M. 1947, 32-3901.**

60-4-102. General power of department to acquire interests in property. Notwithstanding any other provision of law, the department of highways may acquire by purchase or other lawful manner lands or other real property, excluding oil, gas, and mineral rights, which it considers reasonably necessary for present or future highway purposes. The department may acquire a fee simple or lesser estate or interest.

History: **En. Sec. 8-102, Ch. 197, L. 1965; amd. Sec. 126, Ch. 316, L. 1974; R.C.M. 1947, 32-3902.**

60-4-103. Purposes for which property acquired. The acquisition of lands or other property or any interest therein for present or future highway purposes includes but is not limited to any of the following purposes:

(1) for rights-of-way, including those necessary for highways within cities;

(2) for exchanging lands or other property or any interest therein for other such lands or interests for rights-of-way or other authorized purposes. The right of eminent domain shall not be exercised for this purpose.

(3) for deposits of road building materials, including rock, gravel, sand, and earth, for reasonably foreseeable future road-building purposes and uses. The right of eminent domain shall not be exercised to acquire any such deposits which constitute a component part of an existing private business enterprise.

(4) for offices, weighing stations, shops, storage yards, buildings, rest areas, informational sites, or communication facilities;

(5) for parks adjoining or near any highway;

(6) for the culture and support of trees or shrubs which benefit any highway by aiding in the maintenance and preservation of the roadbed;

(7) for drainage in connection with any highway;

(8) for the maintenance of an unobstructed view of any portion of a highway so as to promote the safety of the traveling public;

(9) for the construction and maintenance of stock lanes or trails;

(10) for the construction and maintenance or replacement of private or public drainage systems or natural water or drainage courses made necessary by highway construction;

(11) for providing land or other real property easements or rights-of-way for necessary relocation of existing utilities, utility easements, or other easements for facilities or purposes then in place or in effect upon a proposed right-of-way.

History: En. Sec. 8-103, Ch. 197, L. 1965; R.C.M. 1947, 32-3903.

60-4-104. Exercise of right of eminent domain — presumption. (1) Whenever the department cannot acquire lands or other property or interests in the lands or property at a price or cost which it considers reasonable, it may direct the attorney general or any county attorney to procure the interests by proceedings to be instituted as provided in Title 70, chapter 30, against all nonaccepting landholders.

(2) It shall not so direct the attorney general or any county attorney until it adopts an order declaring that:

(a) public interest and necessity require the construction or completion by the state of the highway or improvement for one of the purposes set forth in 60-4-103;

(b) the interest described in the order and sought to be condemned is necessary for the highway or improvement;

(c) the highway or improvement is planned and located in a manner which will be compatible with the greatest public good and the least private injury.

(3) The order creates and establishes a disputable presumption:

(a) of the public necessity of the proposed highway or improvement;

(b) that the taking of the interest sought is necessary therefor;

(c) that the proposed highway or improvement is planned or located in a manner which will be most compatible with the greatest public good and the least private injury.

History: En. Sec. 8-104, Ch. 197, L. 1965; amd. Sec. 127, Ch. 316, L. 1974; R.C.M. 1947, 32-3904.

60-4-105. Acquisition of whole parcel — sale of excess. (1) Whenever any interest in a part of a parcel of land or other real property is to be acquired for highway purposes leaving the remainder in a shape or condition as to be of little market value or to give rise to claims or litigation over severance or other damage, the department may acquire the whole parcel. It may sell or exchange the remainder for other property needed for highway purposes.

(2) Whenever a part of a parcel of land acquired for highway purposes is in a shape or size as to come within the Montana Subdivision and Platting Act, the department shall prepare and file the required plat in the office of the county clerk and recorder.

History: En. Sec. 8-105, Ch. 197, L. 1965; amd. Sec. 128, Ch. 316, L. 1974; R.C.M. 1947, 32-3905; amd. Sec. 19, Ch. 23, L. 1979.

60-4-106. Power to acquire for future. (1) The power conferred by this chapter to acquire interests in lands or other real property includes power to acquire for reasonably foreseeable future needs.

(2) The department may lease unused portions of lands or other real property which are held for highway purposes and interstate highway rights-of-way which are not presently needed for highway purposes on the terms and conditions which it decides. The department may repair, maintain, and care for the property in order to secure rent from it.

(3) All rent received shall be deposited to the credit of the department.

History: En. Sec. 8-106, Ch. 197, L. 1965; amd. Sec. 129, Ch. 316, L. 1974; R.C.M. 1947, 32-3906.

60-4-107. Road-building materials. (1) A right-of-way or easement acquired by the department for construction, operation, repair, reconstruction, or maintenance of highways includes, among others, the right to use, remove, relocate, redistribute, or otherwise dispose of gravel and other road-building materials found or located within the boundaries of the right-of-way or easement.

(2) For the purposes of this chapter, the gravel or materials are considered to be real property and not minerals.

History: En. Sec. 8-107, Ch. 197, L. 1965; amd. Sec. 130, Ch. 316, L. 1974; R.C.M. 1947, 32-3907.

60-4-108. No compensation in certain cases — exceptions. (1) Whenever the department files a description and plan as provided in 60-2-209, no consideration, allowance, or assessment of values or compensation shall be made in the purchase or condemnation of buildings or improvements or subdivisions placed or erected on the land covered by the plan after the filing.

(2) The establishment of the highway location covered by the description and plan shall be ineffective 1 year after filing if no action to condemn or acquire the property has been commenced.

(3) Nothing in this section or in 60-2-209 applies to crops or similar improvements planted on the lands described. They are governed by 70-30-302.

History: En. Sec. 8-108, Ch. 197, L. 1965; amd. Sec. 131, Ch. 316, L. 1974; R.C.M. 1947, 32-3908.

60-4-109. Irrigable lands rendered unusable — unpaid construction costs. (1) Whenever the department acquires irrigable land for highway purposes or so acquires land as to render other irrigable land unusable for irrigation, it shall pay to the owner of the irrigation or drainage project, in addition to other sums allowed by law, a proportionate share of the unpaid construction costs of the project or drainage district.

(2) The department shall also pay a lump-sum amount to the district sufficient to produce, on an amortized basis for a reasonable period not to exceed 90 years, a sum of money equal to the annual increase in operation and maintenance costs against the remaining lands under irrigation in the district resulting from the severance from the district of the lands acquired by the department and not overcome by bringing new or additional land under irrigation. For the purpose of determining the amount of the lump-sum payment, the annual operation and maintenance assessment of the district shall be considered to be the average for the 5 years, or so many years as the district has assessment experience if less than 5 years, preceding the date of acquisition.

History: En. Sec. 8-116, Ch. 197, L. 1965; amd. Sec. 1, Ch. 299, L. 1969; amd. Sec. 139, Ch. 316, L. 1974; R.C.M. 1947, 32-3916.

60-4-110. Highway crossing railroad, canal, or ditch. (1) Whenever any federal-aid or state highway is laid out on public lands across any railroad, canal, or ditch, the owners or users thereof must, at their expense, so prepare the railroad, canal, or ditch that the highway may cross it without damage or delay.

(2) When the right to cross is obtained through the judgment of any court, no damages shall be awarded.

History: En. Sec. 8-118, Ch. 197, L. 1965; R.C.M. 1947, 32-3918.

60-4-111. Acquisition of property for controlled-access facility. (1) The highway authorities of the state, counties, incorporated cities and towns, respectively, or in cooperation one with the other, may acquire private or public property and property rights for controlled-access highways or controlled-access facilities and service roads. Such rights may include rights of access, air, view, and light. They may be acquired by gift, devise, purchase, or condemnation, in the same manner as may now or hereafter be authorized by law for the acquisition of property or property rights in connection with highways, roads, and streets in their respective jurisdictions.

(2) A right-of-way is hereby given, dedicated, and set apart for controlled-access highways or controlled-access facilities through, over, upon, or across any county road and any street or alley intersecting a controlled-access highway. Acquisition of any county road, street, or alley for use as a controlled-access highway or controlled-access facility shall be deemed a superior and more necessary public use and purpose than the public use or purpose to which such road, street, or alley has theretofore been dedicated.

History: En. Sec. 8-120, Ch. 197, L. 1965; R.C.M. 1947, 32-3920.

Part 2

Disposition of Property

60-4-201. Exchange of interest in real property. (1) The department may determine that an interest in real property, however acquired by it, is no longer necessary to the laying out, altering, construction, improvement, or maintenance of a highway. It may then exchange the interest, either as entire or partial consideration, for any other interest in real property needed for highway purposes. The department may establish the manner and terms and conditions for the exchange.

(2) The owner from whom the interest was originally acquired by the state or his successor in interest has the right to require the department to offer the land for sale in the manner set forth in 60-4-202 and 60-4-203. The department shall notify the owner or successor in interest of its intention to exchange the interest. The owner shall make his demand for sale by registered or certified mail to the department within 10 days after receipt of notice from the department.

History: En. Sec. 8-109, Ch. 197, L. 1965; amd. Sec. 132, Ch. 316, L. 1974; R.C.M. 1947, 32-3909.

60-4-202. Sale of interest in real property. The department may sell an interest in real property, however acquired by it, which it determines is not necessary to the laying out, altering, construction, improvement, or maintenance of a highway. If the interest is reasonably of a value in excess of $100, sale shall be made to the highest bidder at public auction. The sale shall be conducted as provided in 77-2-321.

History: En. Sec. 8-110, Ch. 197, L. 1965; amd. Sec. 133, Ch. 316, L. 1974; R.C.M. 1947, 32-3910; amd. Sec. 1, Ch. 305, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "or by sealed bids as the department decides" after "public auction" in the second sentence; substituted "77-2-321" for "60-4-203" in the last sentence.

Effective Date: Section 3, Ch. 305, L. 1981, provided: "This act is effective on passage and approval." Approved April 8, 1981.

60-4-203. Conduct of sale. (1) The department shall publish notice of the sale in a newspaper published in the county in which the interest is located once a week for 4 successive weeks. The notice of sale shall contain the information required by 77-2-322. Sale shall be held in the county wherein the property is located.

(2) Before the sale of an interest having a value in excess of $100, the department shall have it appraised at a price representing a fair market value. The appraised value shall be stated in the published notice.

(3) A sale of an interest may not be made unless it has been appraised within 3 months prior to the date of the sale. A sale may not be made for less than 90% of the appraised value.

(4) Title to an interest may not pass from the state until the purchaser has paid the full amount of the purchase price into the state treasury to the credit of the department.

History: En. Sec. 8-111, Ch. 197, L. 1965; amd. Sec. 1, Ch. 21, L. 1974; amd. Sec. 134, Ch. 316, L. 1974; R.C.M. 1947, 32-3911; amd. Sec. 20, Ch. 23, L. 1979; amd. Sec. 2, Ch. 305, L. 1981.

Compiler's Comments

1981 Amendment: Increased the publication period in (1) from 2 to 4 weeks; inserted the second sentence in (1); deleted "unless the department finds it impractical, in which case the sale shall be held at the office of the department" at the end of (1).

Effective Date: Section 3, Ch. 305, L. 1981, provided: "This act is effective on passage and approval." Approved April 8, 1981.

60-4-204. Option of original owner or successor in interest to purchase at sale price. The owner from whom the interest was originally acquired or his successor in interest shall have the option to purchase the interest by offering therefor an amount of money equal to the highest bid received for the interest at the sale. The offer shall be sent to the department by registered or certified mail within 10 days from the date of the sale.

History: En. Sec. 8-112, Ch. 197, L. 1965; amd. Sec. 135, Ch. 316, L. 1974; R.C.M. 1947, 32-3912.

60-4-205. Private sale if no bid or offer. (1) If, after proper notice is published, the department receives neither bid at public sale nor offer from the original owner or his successor in interest, it may at any time thereafter sell the interest at private sale. At the sale, the department may accept as the purchase price an amount of money not less than 90% of the appraised value.

(2) Title to an interest may not pass from the state until the purchaser has paid the full amount of the purchase price into the state treasury to the credit of the department.

History: En. Sec. 8-113, Ch. 197, L. 1965; amd. Sec. 136, Ch. 316, L. 1974; R.C.M. 1947, 32-3913; amd. Sec. 21, Ch. 23, L. 1979.

60-4-206. Sale of personal property and printed matter. (1) The department may sell at public or private sale, as it determines, an interest in personal property, however acquired by it, which it determines is not necessary to the laying out, altering, construction, improvement, or maintenance of a highway.

(2) The department may sell at public or private sale, as it determines, maps, books, pamphlets, or other printed matter prepared or acquired by the department. The department may sell copies of highway records to the public and may set reasonable prices for them.

(3) The proceeds from sales made under this section shall be paid into the state treasury to the credit of the department.

History: En. Sec. 8-114, Ch. 197, L. 1965; amd. Sec. 137, Ch. 316, L. 1974; R.C.M. 1947, 32-3914.

60-4-207. Conveyances — execution and contents. (1) Land or an interest in land sold by the department shall be conveyed only when full payment has been made for it. It shall be conveyed by a deed or patent of conveyance without covenants which recites that it was issued under this chapter.

(2) The deed or patent shall contain a reservation of easements for rights-of-way for the benefit of the United States and all other reservations to which the land conveyed may be subject.

(3) The deed or patent shall be signed by the governor or, in case of his absence or inability, the lieutenant governor. It shall be attested by the secretary of state and have attached the great seal of the state. It need not be acknowledged.

History: En. Sec. 8-115, Ch. 197, L. 1965; amd. Sec. 138, Ch. 316, L. 1974; R.C.M. 1947, 32-3915.

60-4-208. Abandonment or vacation of federal-aid or state highways. Every federal-aid or state highway once established must continue until abandoned or vacated by operation of law or by judgment of a court of competent jurisdiction or by a proper order of the commission.

History: En. Sec. 8-117, Ch. 197, L. 1965; R.C.M. 1947, 32-3917.

Part 3

Relocation of Displaced Persons

60-4-301. Definitions. In this part, the following definitions apply:

(1) "Business" means any lawful activity conducted primarily:

(a) for the purchase and resale, manufacture, processing, or marketing of products, commodities, or other personal property;

(b) for the sale of services to the public; or

(c) by a nonprofit corporation.

(2) "Displaced person" means any individual, family, business, or farm operation which moves from real property acquired for state highway purposes or for a federal-aid highway.

(3) "Family" means two or more persons living together in the same dwelling unit who are related to each other by blood, marriage, adoption, or legal guardianship.

(4) "Farm operation" means any activity conducted primarily for the production of one or more agricultural products or commodities for sale and home use and customarily producing the products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(5) "Individual" means a person who is not a member of a family.

History: En. Sec. 3, Ch. 212, L. 1969; amd. Sec. 140, Ch. 316, L. 1974; R.C.M. 1947, 32-3923.

60-4-302. Advisory assistance. (1) The department of highways may give relocation advisory assistance to an individual, family, business, or farm operation displaced because of the acquisition of real property for a project on the state highway systems.

(2) In giving assistance, the department may establish a temporary local relocation advisory assistance office to assist in obtaining replacement facilities for individuals, families, and businesses which must relocate because of the acquisition of right-of-way for a project on the state highway systems.

History: En. Sec. 4, Ch. 212, L. 1969; amd. Sec. 141, Ch. 316, L. 1974; R.C.M. 1947, 32-3924.

60-4-303. Compensation for moving expense. (1) As a part of the cost of construction, the department may compensate a displaced person for his actual and reasonable expense in moving himself, family, business, or farm operation, including moving personal property, and for his actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, not to exceed an amount equal to the reasonable expenses that would have been required to relocate the property, as determined by the department, and actual reasonable expenses in searching for a replacement business or farm.

(2) A displaced person who moves from a dwelling may elect to receive, instead of the payments authorized by subsection (1), a moving expense allowance, determined according to a schedule established by the department, not to exceed $300 and in addition a dislocation allowance of $200.

History: En. Sec. 5, Ch. 212, L. 1969; amd. Sec. 2, Ch. 426, L. 1971; amd. Sec. 142, Ch. 316, L. 1974; R.C.M. 1947, 32-3925(a), (b).

60-4-304. Relocation payment in case of business or farm operation. (1) A displaced person who moves or discontinues his business or farm operation may elect to receive, instead of the payment authorized by 60-4-303(1), a fixed relocation payment in an amount equal to the average annual net earnings of the business or farm operation, except that the payment may not be less than $2,500 or more than $10,000. In the case of a business, a payment may not be made under this section unless the department is satisfied that the business cannot be relocated without a substantial loss of patronage and is not a part of a commercial enterprise having at least one other establishment not being acquired which is engaged in the same or similar business.

(2) For purposes of this section, the term "average annual net earnings" means one-half of any net earnings of the business or farm operation, before federal and state income taxes, during the 2 taxable years immediately preceding the taxable year in which the business or farm operation moves from the real property acquired for the project or during such other period which the department determines to be more equitable for establishing the earnings and includes any compensation paid by the business or farm operation to the owner, his spouse, or his dependents during this 2-year period.

(3) To be eligible for the payment authorized by this section, the business or farm operation must make its state income tax returns and its financial statements and accounting records available for audit and confidential use to determine the payment authorized by this section.

History: En. Sec. 5, Ch. 212, L. 1969; amd. Sec. 2, Ch. 426, L. 1971; amd. Sec. 142, Ch. 316, L. 1974; R.C.M. 1947, 32-3925(c).

60-4-305. Additional payment for realty with qualified dwelling. (1) In addition to the payments authorized by 60-4-303 and 60-4-304 as a part of the cost of construction, the department may make the following payments to the owner of real property acquired for a project on the state highway systems which is improved with a single-, two-, or three-family dwelling actually owned and occupied by the owner for not less than 180 days prior to the initiation of negotiations for the acquisition of the property:

(a) a payment not to exceed $15,000 which, when added to the acquisition payment, equals the reasonable price required for a comparable dwelling determined, in accordance with standards established by the department, to be a decent, safe, and sanitary dwelling adequate to accommodate the displaced owner, reasonably accessible to public services and place of employment and available on the market;

(b) a payment, if any, which will compensate the displaced person for increased costs which the person is required to pay for financing the acquisition of a comparable replacement dwelling. This payment shall be made only if the dwelling acquired by the department was encumbered by a bona fide mortgage which was a valid lien on the dwelling for not less than 180 days prior to the initiation of negotiations for the acquisition of the dwelling. This payment shall be equal to the excess in the aggregate interest and other debt service cost of that amount of the principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the mortgage on the acquired dwelling under the remaining term of the mortgage on the acquired dwelling reduced to discounted present value. The discount rate shall be the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located.

(c) the payment of reasonable expenses incurred by the displaced person for evidence of title, recording fees, and other closing costs incidental to the purchase of replacement dwelling, but not including prepaid expenses.

(2) Payments shall be made only to a displaced owner who purchases and occupies a dwelling, that meets standards established by the department, within 1 year subsequent to the date on which he is required to move from the dwelling acquired for the project.

History: En. Sec. 6, Ch. 212, L. 1969; amd. Sec. 3, Ch. 426, L. 1971; amd. Sec. 143, Ch. 316, L. 1974; R.C.M. 1947, 32-3926.

60-4-306. Additional payment for realty with other dwelling. (1) In addition to the payment authorized by 60-4-303 and 60-4-304 as a part of the cost of construction, the department may make a payment to an individual or family displaced from a dwelling not eligible to receive a payment under 60-4-305, which dwelling was actually and lawfully occupied by the individual or family for not less than 90 days prior to the first written offer for the acquisition of the property.

(2) The payment, not to exceed $4,000, shall be the additional amount which is necessary to enable the individual or family to lease or rent for a period not to exceed 4 years or to make the downpayment on the purchase of a decent, safe, and sanitary dwelling of standards adequate to accommodate the individual or family in areas not generally less desirable in regard to public utilities and public and commercial facilities, except that if the amount of the downpayment to purchase exceeds $2,000, the individual or family must equally match the amount in excess of $2,000 in making the downpayment.

History: En. Sec. 7, Ch. 212, L. 1969; amd. Sec. 4, Ch. 426, L. 1971; amd. Sec. 144, Ch. 316, L. 1974; R.C.M. 1947, 32-3927.

60-4-307. Review of application for assistance — director's decision final. A displaced person aggrieved by a determination as to eligibility for a payment authorized by 60-4-303 through 60-4-306 or the amount of a payment may have his application reviewed by the director of highways, whose decision shall be final.

History: En. Sec. 8, Ch. 212, L. 1969; amd. Sec. 145, Ch. 316, L. 1974; amd. Sec. 1, Ch. 143, L. 1977; R.C.M. 1947, 32-3928.

60-4-308. Rules. The department may adopt rules to implement this part, including rules to implement the payment of expenses authorized by 60-4-303 through 60-4-306 and other rules relating to highway relocation assistance which are necessary or desirable under federal laws and rules. The department's rules shall include provisions relating to:

(1) a moving expense allowance, as provided in 60-4-303(2), for a displaced person who moves from a dwelling, determined according to a schedule, not to exceed $300;

(2) the conditions for decent, safe, and sanitary dwellings;

(3) procedure for an aggrieved displaced person to have his determination of eligibility or amount of payment reviewed by the commission; and

(4) eligibility of displaced persons for relocation assistance payments, the procedure for those persons to claim the payments, and the amounts of the payments.

History: **En. Sec. 9, Ch. 212, L. 1969; amd. Sec. 5, Ch. 426, L. 1971; amd. Sec. 146, Ch. 316, L. 1974; R.C.M. 1947, 32-3929.**

60-4-309. Assistance payments not income for state tax purposes. A payment received by a displaced person under this part may not be considered as income for Montana state income tax purposes.

History: **En. Sec. 10, Ch. 212, L. 1969; amd. Sec. 147, Ch. 316, L. 1974; R.C.M. 1947, 32-3930.**

60-4-310. No new element of condemnation damages created. Nothing in this part creates in a condemnation proceeding brought under the power of eminent domain an element of damages not in existence on July 1, 1969.

History: **En. Sec. 11, Ch. 212, L. 1969; amd. Sec. 148, Ch. 316, L. 1974; R.C.M. 1947, 32-3931.**

Part 4

Relocation of Utilities

60-4-401. Relocation — definitions. For the purposes of the sections relating to relocation of utilities facilities, terms are defined as follows:

(1) "Utility" includes publicly, privately, and cooperatively owned utilities.

(2) "Cost of relocation" includes the entire amount paid by the utility properly attributable to the relocation after deducting any increase in the value of the new facility and any salvage value derived from the old facility.

(3) "Federal-aid systems" includes the federal-aid primary system, the federal-aid secondary system, the federal-aid interstate system, and urban extensions of all of them.

(4) "Interstate system" includes any highway now included or which may hereafter be included as a part of the national system of interstate and defense highways provided for in Title 23, U.S.C.

History: **En. Sec. 4-116, Ch. 197, L. 1965; R.C.M. 1947, 32-2416; amd. Sec. 22, Ch. 23, L. 1979.**

60-4-402. Relocation of utility facilities — hearings — order. (1) After appropriate hearings, the department may adopt reasonable regulations for the installation, construction, maintenance, repair, renewal, or relocation of tracks, pipes, mains, conduits, cables, wires, towers, poles, and other equipment and appliances (hereafter called "facilities") of a utility in, on, along, over, across, through, or under a project on any of the federal-aid systems.

(2) The department shall give written notice of the place and time of a public hearing to determine the necessity of a relocation of facilities to all

concerned not less than 20 days before the hearing. Hearing may be waived in writing by the utility concerned or other interested parties.

(3) After the hearing, the department may determine that the facilities must be relocated. If so, the utility owning or operating the facilities shall relocate them in accordance with the order of the department. The utility and its successors and assigns may maintain and operate the relocated facilities, with the necessary appurtenances, in the new location.

History: **En. Sec. 4-114, Ch. 197, L. 1965; amd. Sec. 82, Ch. 316, L. 1974; R.C.M. 1947, 32-2414.**

60-4-403. Relocation — costs. Seventy-five percent of all costs of relocation, including the costs of acquisition of new right-of-way, of dismantling, and of removal, shall be paid by the department as a cost of highway construction.

History: **En. Sec. 4-115, Ch. 197, L. 1965; amd. Sec. 83, Ch. 316, L. 1974; R.C.M. 1947, 32-2415.**

CHAPTER 5

CONTROL OF ACCESS

Part 1 — Control of Access

Section

60-5-101. Policy.
60-5-102. Definitions.
60-5-103. Designation as controlled-access highway.
60-5-104. Powers of highway authorities.
60-5-105. Design of controlled-access facility — entrance and exit restricted.
60-5-106. Elimination of grade crossings.
60-5-107. Existing roads and streets as service roads.
60-5-108. Maintenance of frontage roads.
60-5-109. Marking of controlled-access highway or facility with signs.
60-5-110. Commercial enterprise or structure prohibited.
60-5-111. Violations — penalties.

Part 1

Control of Access

60-5-101. Policy. The legislature declares it to be the policy of this state to facilitate the flow of traffic and promote public safety by controlling access to:

(1) highways included by the federal highway administration in the national system of interstate highways;

(2) throughways and intersections with throughways;

(3) such other federal-aid and state highways as shall be designated by the commission in accordance with the requirements set forth in this chapter.

History: **En. Sec. 10-101, Ch. 197, L. 1965; amd. Sec. 152, Ch. 316, L. 1974; R.C.M. 1947, 32-4301; amd. Sec. 23, Ch. 23, L. 1979.**

60-5-102. Definitions. When used in this chapter, the following definitions apply:

(1) "Interstate highway" means a highway included as a part of the national system of interstate highways.

(2) "Controlled-access highway" means those portions of an interstate highway, throughway, or throughway intersection which the commission designates for through traffic or other federal-aid or state highway over, from, or to which owners or occupants of abutting land or other persons have no easement of access or only a limited easement of access, light, air, or view. It also means those portions of spurs to the interstate highway system which the commission designates as unsafe or impeded by unrestricted access of traffic from intersecting streets or alleys or public or private roads or ways of passage.

(3) "Controlled-access facility" means and includes streets, alleys, public roads, private roads, and ways of passage intersecting a controlled-access highway and real property contiguous to the right-of-way of a controlled-access highway.

(4) "Existing highway" means and includes highways, roads, and streets established, constructed, and in use on March 2, 1955. It does not include highways, roads, or streets, established, constructed, and in use after that date or highways, roads, or streets, or portions thereof relocated after that date.

(5) "Arterial highway" means a state highway designated by agreement between the commission and the secretary of transportation as part of the federal-aid primary system and any highway so designated as a part of the federal-aid secondary system which has been constructed and is being used primarily for through traffic on a continuous route.

(6) "Throughway" means a portion of an arterial highway constructed and used for carrying traffic partially or entirely around a town or city or a portion thereof.

(7) "Throughway intersection area" means an area within a radius of 300 feet from the point of intersection of the centerlines of a throughway and a public road, street, or highway.

(8) "Highway authorities" or "authority" means the entities in state, county, and municipal governments which have authority to construct, repair, and maintain highways, roads, and streets.

History: En. Sec. 10-102, Ch. 197, L. 1965; amd. Sec. 153, Ch. 316, L. 1974; R.C.M. 1947, 32-4302.

60-5-103. Designation as controlled-access highway. (1) No portion of any interstate highway, throughway or throughway intersection, or other federal-aid or state highway shall be designated as a controlled-access highway unless the commission shall adopt a resolution so designating it. The resolution shall be adopted by the majority vote of the members in attendance at any regular or special meeting. In it, the commission shall find and determine that it is necessary and desirable that:

(a) the owners or occupants of the abutting land or other persons shall have no easement of access or only a limited easement of access, light, air, or view;

(b) the rights of or easements to access, light, air, or view be acquired by the state so as to prevent such portion of highway from becoming unsafe for or impeded by unrestricted access of traffic from intersecting streets, alleys, public or private roads, or ways of passage.

(2) The resolution shall contain a statement of the reasons for its adoption and shall set forth the location, distance, and termini of the portion of the highway designated as a controlled-access highway.

History: **En. Sec. 10-103, Ch. 197, L. 1965; amd. Sec. 1, Ch. 215, L. 1969; R.C.M. 1947, 32-4303.**

60-5-104. Powers of highway authorities. (1) Those authorities of the state, counties, and municipalities authorized to participate in construction and maintenance of highways may plan, designate, establish, regulate, vacate, alter, improve, maintain, and provide controlled-access facilities for public use. Each such authority shall by resolution make the findings and determinations provided for in 60-5-103.

(2) The highway authorities of the state, counties, incorporated cities, and towns, respectively, or in cooperation each with the other, may acquire private or public property and property rights for controlled-access highways or controlled-access facilities and service roads. Such rights may include rights of access, air, view, and light. They may be acquired by gift, devise, purchase, or condemnation, in the same manner as may now or hereafter be authorized by law for the acquisition of property or property rights in connection with highways, roads, and streets in their respective jurisdictions.

(3) Within incorporated cities and towns and upon county roads or secondary highways, the department of highways shall not control access without the consent of the appropriate governing body.

(4) Each authority may also exercise with relation to controlled-access facilities any and all additional authority now or hereafter vested in it over highways, roads, or streets within its respective jurisdiction. It may regulate, restrict, or prohibit the use of controlled-access facilities by any vehicles or traffic.

History: **(1), (3), (4)En. Sec. 10-105, Ch. 197, L. 1965; amd. Sec. 1, Ch. 436, L. 1973; Sec. 32-4305, R.C.M. 1947; (2)En. Sec. 8-218, Ch. 197, L. 1965; Sec. 32-4018, R.C.M. 1947; R.C.M. 1947, 32-4018, 32-4305.**

60-5-105. Design of controlled-access facility — entrance and exit restricted. (1) Each highway authority may so design any controlled-access facility and so regulate, restrict, or prohibit access as to best serve the traffic for which the facility is intended. In so doing, it may divide and separate any controlled-access facility into separate roadways by the construction of raised curbings, central dividing sections, or other physical separations or by designating the separate roadways by signs, markers, stripes, and other devices.

(2) No person shall have any right to enter upon, exit from, or cross any controlled-access facility except at designated points at which access may be permitted. Terms and conditions governing such access may be specified from time to time.

History: **En. Sec. 10-106, Ch. 197, L. 1965; R.C.M. 1947, 32-4306.**

60-5-106. Elimination of grade crossings. (1) Each highway authority may provide for elimination of intersections at grade of controlled-access highways or controlled-access facilities with existing federal-aid and state highways, county roads, and city or town streets. Elimination shall be accomplished at the boundary of the controlled-access right-of-way.

(2) After the establishment of any controlled-access highway or facility, no private or public highway or street which is not a part of the highway or facility shall intersect it at grade, except as may be provided in the resolution designating it a controlled-access highway or facility. No street, road, highway, or other public or private way shall be opened into or connected with any controlled-access highway or facility without the prior consent and approval of the appropriate highway authority which adopted the controlled-access resolution.

(3) The commission may, whenever it determines that the public safety is not thereby impaired, authorize the continued intersection at grade of lightly traveled farm entrances and minor public roads as ways of access to controlled-access highways in sparsely populated rural areas. The commission shall have sole jurisdiction to determine the existence and location of any intersection with interstate highways, throughways, and other federal-aid and state highways.

History: En. Sec. 10-107, Ch. 197, L. 1965; R.C.M. 1947, 32-4307; amd. Sec. 1, Ch. 40, L. 1979.

60-5-107. Existing roads and streets as service roads. (1) In connection with the development of any controlled-access highway or facility, each highway authority may plan, designate, establish, use, regulate, alter, improve, maintain, and vacate local service roads and streets. Each authority may designate as local service roads and streets any existing road or street.

(2) Service roads and streets shall be of appropriate design. They shall be separated from the controlled-access highway or facility by means of all devices determined to be necessary to carry out the provisions of this chapter.

(3) Each authority shall exercise jurisdiction over service roads and streets in the same manner as is authorized over controlled-access highways or facilities.

History: En. Sec. 10-108, Ch. 197, L. 1965; R.C.M. 1947, 32-4308.

60-5-108. Maintenance of frontage roads. Frontage roads shall be maintained by the department of highways.

History: En. Sec. 1, Ch. 90, L. 1965; amd. Sec. 154, Ch. 316, L. 1974; R.C.M. 1947, 32-4308.1.

60-5-109. Marking of controlled-access highway or facility with signs. Any controlled-access highway or facility and portions thereof shall be physically marked by signs indicating to drivers of vehicles the points at which they enter and leave a controlled-access area.

History: En. Sec. 10-109, Ch. 197, L. 1965; R.C.M. 1947, 32-4309.

60-5-110. Commercial enterprise or structure prohibited. No commercial enterprise or structure shall be constructed or operated on the publicly owned right-of-way of a controlled-access highway or facility or on any publicly leased land used in connection therewith.

History: En. Sec. 10-110, Ch. 197, L. 1965; R.C.M. 1947, 32-4310.

60-5-111. Violations — penalties. (1) On any controlled-access highway or facility, it is unlawful for any person to construct, operate, or maintain any road or private driveway connecting with the highway or facility without first obtaining permission in writing from the highway authority having jurisdiction and, with the exception of an interstate highway, from the local governing body.

(2) Any person who violates any of the provisions of this section is guilty of a misdemeanor. Upon arrest and conviction therefor, he shall be punished by a fine of not less than $5 or more than $100 or by imprisonment in the city or county jail for not less than 5 days or more than 90 days or by both fine and imprisonment.

History: **En. Sec. 10-111, Ch. 197, L. 1965; R.C.M. 1947, 32-4311(1), (1)(e), (2).**

CHAPTER 6

HIGHWAY ENCROACHMENTS

Part 1 — Removal of Encroachments by State Authorities

Section

60-6-101. Highway encroachments — immediate removal.
60-6-102. Notice of encroachment.
60-6-103. Time limit for removal — penalty.
60-6-104. Denial of encroachment — department action.
60-6-105. Removal at owner's expense when not denied.

Part 1

Removal of Encroachments by State Authorities

60-6-101. Highway encroachments — immediate removal. (1) If any highway under the jurisdiction of the highway commission is encroached upon by a fence, building, structure, sign, marker, or other obstruction, the department of highways may give notice in writing to the person erecting or maintaining such encroachment requiring the same to be removed.

(2) If the encroachment obstructs and prevents the use of the highway for vehicles, the department may immediately remove the same without the notice required by 60-6-102.

History: **En. 32-4411 by Sec. 1, Ch. 231, L. 1975; R.C.M. 1947, 32-4411.**

60-6-102. Notice of encroachment. (1) Notice to remove the encroachment, specifying the width of the highway right-of-way and the place and extent of the encroachment, must be given to the person erecting or maintaining such encroachment.

(2) Notice must be given in the following manner:

(a) in writing by certified mail sent to the person's business or personal address or by personal service;

(b) if such address cannot be found, by posting it on the encroachment.

History: **En. 32-4412 by Sec. 2, Ch. 231, L. 1975; R.C.M. 1947, 32-4412.**

60-6-103. Time limit for removal — penalty. If the encroachment is not permanently affixed to the land, such encroachment shall be removed from the right-of-way within 2 days after receipt of the notice. If such an encroachment remains on the right-of-way after this period of time, the person who causes, owns, or controls the encroachment shall be liable for the cost of such removal.

History: En. 32-4413 by Sec. 3, Ch. 231, L. 1975; R.C.M. 1947, 32-4413.

60-6-104. Denial of encroachment — department action. If the encroachment is denied, the department shall commence appropriate legal action to have said encroachment removed. If the department recovers a judgment, it shall have its costs. If the encroachment is not removed within 5 days after entry of judgment, the department may remove it at the expense of the person who causes, owns, or controls it.

History: En. 32-4414 by Sec. 4, Ch. 231, L. 1975; R.C.M. 1947, 32-4414(1).

60-6-105. Removal at owner's expense when not denied. If an encroachment affixed to the land is not denied and is not removed within 5 days after receipt of the notice, the department may remove it at the expense of the person who causes, owns, or controls it. The department may recover the expense of removal and costs in an action brought for that purpose.

History: En. 32-4414 by Sec. 4, Ch. 231, L. 1975; R.C.M. 1947, 32-4414(2).

CHAPTER 7

LIVESTOCK ON HIGHWAYS

Part 1 — Fencing of Open Range

Section

60-7-101. Purpose.
60-7-102. Definitions.
60-7-103. Department to fence right-of-way through open range.

Part 2 — Grazing of Livestock on Highways

60-7-201. Grazing livestock on highway unlawful.
60-7-202. Exclusions.
60-7-203. Penalty.
60-7-204. Flagmen escorts — prohibitions against nighttime herding on public highways.
60-7-205. Violations.

Part 1

Fencing of Open Range

60-7-101. Purpose. It is the purpose of 60-7-101 through 60-7-103 to balance the tradition of the open range and the economic and geographic problems of raising livestock with the need for safer highways and the policy of taking all feasible measures to reduce the high incidence of traffic accidents and fatalities on Montana highways.

History: En. 32-2425.1 by Sec. 1, Ch. 255, L. 1974; R.C.M. 1947, 32-2425.1.

60-7-102. Definitions. As used in 60-2-208 and 60-7-101 through 60-7-103, the following definitions apply:

(1) "Open range" means those areas of the state where livestock is raised and maintained in sufficient numbers as to constitute a significant part of the local or county economy and where such animals graze and move about generally unrestrained by fences.

(2) A "high-hazard area" is a segment of the primary highway system passing through open range where livestock moves on or across the highway often enough, in enough numbers, and with enough ease of access that such animals create a significant traffic safety hazard. Evidence bearing on whether animals on the highway pose a significant hazard includes, without limitation, past accident records, the opinions of persons qualified by experience to evaluate the relative safety of road conditions, and the terrain around the road.

(3) A "low-hazard area" is a segment of the primary highway system passing through open range which is not a high-hazard area.

(4) "Livestock" means cattle, sheep, swine, horses, mules, and goats.

History: En. Sec. 1, Ch. 311, L. 1969; amd. Sec. 2, Ch. 255, L. 1974; amd. Sec. 91, Ch. 316, L. 1974; R.C.M. 1947, 32-2426(2).

60-7-103. Department to fence right-of-way through open range. (1) The department shall fence the right-of-way of any part of the state highway system that is constructed or reconstructed after July 1, 1969, through open range where livestock present a hazard to the safety of the motorist. Where a fence is constructed, adequate stock gates or stock passes, as necessary, shall be provided to make land on either side of the highway usable for livestock purposes.

(2) The department shall erect a fence in every high-hazard area as promptly as possible, and the cost of such construction is an expenditure for the enforcement of federal-aid highway safety programs. Gates, stock underpasses, water facilites, and cattle guards may be installed where necessary to make the land on either side of the highway usable for livestock purposes or where a public right-of-way intersects the state highway.

History: (1)En. Sec. 1, Ch. 311, L. 1969; amd. Sec. 2, Ch. 255, L. 1974; amd. Sec. 91, Ch. 316, L. 1974; Sec. 32-2426, R.C.M. 1947; (2)En. 32-2429 by Sec. 5, Ch. 255, L. 1974; Sec. 32-2429, R.C.M. 1947; R.C.M. 1947, 32-2426(1), 32-2429.

Part 2

Grazing of Livestock on Highways

60-7-201. Grazing livestock on highway unlawful. A person who owns or possesses livestock may not permit the livestock to graze, remain upon, or occupy a part of the right-of-way of:

(1) a state highway running through cultivated areas or a part of the fenced right-of-way of a state highway if in either case the highway has been designated by agreement between the highway commission and the secretary of transportation as a part of the national system of interstate and defense highways; or

(2) a state highway designated by agreement between the highway commission and the secretary of transportation as a part of the federal-aid primary system, except as provided in 60-7-202.

History: En. Sec. 1, Ch. 95, L. 1951; amd. Sec. 1, Ch. 186, L. 1961; Sec. 32-1018, R.C.M. 1947; amd. and redes. 32-21-176 by Sec. 7, Ch. 316, L. 1974; R.C.M. 1947, 32-21-176.

60-7-202. Exclusions. Section 60-7-201 does not apply to the following:

(1) livestock on state highways under the charge of one or more herders;

(2) the parts of fenced highways adjacent to open range where a highway device has not been installed to exclude range livestock;

(3) the parts of a state highway or a part of the federal-aid primary system which the department of highways designates as being impracticable to exclude livestock. These portions of the highway shall be marked by proper signs in accordance with the department's manual and specifications for a uniform system of traffic-control devices.

History: En. Sec. 2, Ch. 95, L. 1951; amd. Sec. 2, Ch. 186, L. 1961; Sec. 32-1019, R.C.M. 1947; amd. and redes. 32-21-177 by Sec. 8, Ch. 316, L. 1974; R.C.M. 1947, 32-21-177; amd. Sec. 24, Ch. 23, L. 1979.

60-7-203. Penalty. A person who violates 60-7-201 is guilty of a misdemeanor and is subject to a fine of not less than $5 or more than $100 for each offense. In a civil action for damages caused by collision between a motor vehicle and a domestic animal or animals on a highway brought by the owner, driver, or occupant of a motor vehicle or by their personal representatives or assigns or by the owner of livestock, there is no presumption or inference that the collision was due to negligence on the part of the owner or the person in possession of the livestock or the driver or owner of the vehicle.

History: En. Sec. 3, Ch. 95, L. 1951; amd. Sec. 3, Ch. 186, L. 1961; Sec. 32-1020, R.C.M. 1947; amd. and redes. 32-21-178 by Sec. 9, Ch. 316, L. 1974; R.C.M. 1947, 32-21-178.

60-7-204. Flagmen escorts — prohibitions against nighttime herding on public highways. A person who owns, controls, or possesses livestock may not herd or drive a herd of livestock numbering more than 10 on an interstate or state primary highway designated as such by the highway commission unless the livestock is preceded and followed by flagmen escorts for the purpose of warning other highway users. Livestock may not be herded or driven on an interstate or state primary highway during nighttime, as that term is defined in 1-1-301, except in a case of emergency. In the case of an emergency during the nighttime, the flagmen escorts shall use adequate warning lights, such as but not limited to portable lamps, lanterns, or rotating beacons. This section does not apply during daytime at posted livestock crossings on highways.

History: En. Sec. 1, Ch. 90, L. 1967; Sec. 32-1021, R.C.M. 1947; amd. and redes. 32-21-179 by Sec. 10, Ch. 316, L. 1974; R.C.M. 1947, 32-21-179.

60-7-205. Violations. A person who violates 60-7-204 is guilty of a misdemeanor.

History: En. Sec. 2, Ch. 90, L. 1967; Sec. 32-1022, R.C.M. 1947; amd. and redes. 32-21-180 by Sec. 11, Ch. 316, L. 1974; R.C.M. 1947, 32-21-180.

CHAPTERS 8 THROUGH 10

RESERVED

CHAPTER 11

RAIL TRANSPORTATION

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60-11-101. Rail planning.

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Chapter Compiler's Comments

Interim Study: HJR 27 and HJR 33 (1981) requested an interim study of transportation in Montana. The Legislative Council designated the Joint Subcommittee on Transportation to conduct the study.

Limitation: Section 14, Ch. 486, L. 1981, provided: "Nothing contained in this act or in Title 60, chapter 11, shall permit or authorize the purchase or acquisition in any manner of railroad track, roadbeds, associated facilities, railroad equipment, or railroad rolling stock by the state of Montana. Nothing contained in this act or in Title 60, chapter 11, shall authorize the state of Montana to do any more or any less than a municipality or county is authorized to do in connection with the issuance of industrial development revenue bonds under Title 90, chapter 5, part 1."

Cross-References
Railroads, Title 69, chapter 14.

Part 1

General Provisions

60-11-101. Rail planning. The department of commerce may administer rail planning activities.

History: En. Sec. 1, Ch. 324, L. 1979; amd. Sec. 16, Ch. 274, L. 1981.

Compiler's Comments
1981 Amendment: Inserted "of commerce" after "The department".

Part 2

Rail Passenger Service

60-11-201. Agreements for rail passenger service application. The governor or his authorized representative may negotiate with the proper authority representing any other state to establish an agreement to enable Montana, in concert with other states, to submit an application to the rail passenger corporation for institution of rail passenger service under the provisions of the Rail Passenger Service Act (45 U.S.C. 563(b)). The governor may not participate in the submission of an application until the base agreement and any application have been approved by the legislature.

History: En. Sec. 1, Ch. 498, L. 1981.

Compiler's Comments
1981 Title: The title to Ch. 498, L. 1981 (HB 593), read: "An act to authorize the governor to negotiate with other states to establish agreements for submitting application to the rail passenger corporation for institution of rail passenger service in the state of Montana."

Parts 3 through 10 reserved

Part 11

Railroad Rehabilitation Revenue Bonds

60-11-1101. Intent. It is the intent of the legislature to provide a mechanism for the rehabilitation of railroad tracks and associated facilities in Montana and thereby to strengthen the rail transportation system of Montana and the state's economy.

History: En. Sec. 1, Ch. 564, L. 1979.

60-11-1102. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Bonds" means railroad rehabilitation revenue bonds authorized by 60-11-1103.

(2) "Department" means the department of commerce.

(3) "Person" means an individual or a partnership, association, corporation, or other business entity.

(4) "Project" or "rehabilitation project" means a business undertaking to repair, improve, or replace rail facilities to improve the safety and efficiency of the facilities and to derive revenue.

(5) "Rail facilities" means the line of track of a railroad, including spurs and extensions, and associated facilities, including but not limited to freight and commodities, storage and loading facilities, signal and switching systems, roadbeds, and machinery and equipment designed for rail maintenance, but the term does not include engines or rolling stock used for the transport of goods or passengers.

(6) "Refunding bonds" means railroad rehabilitation refunding revenue bonds authorized by 60-11-1109.

History: En. Sec. 2, Ch. 564, L. 1979; amd. Sec. 1, Ch. 486, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of highways" in (2); inserted "improve" after "to repair" in (4); substituted "freight and commodities, storage and loading facilities" for "loading platforms" after "not limited to" in (5).

Coordination Instruction: Section 15, Ch. 486, L. 1981, provided: "If the 47th legislature passes a bill creating a department of commerce and that bill is approved, then the definition of "department" contained in 60-11-1102(2) and 60-11-1202(2) shall be changed to read "means the department of commerce"."

Severability: Section 16, Ch. 486, L. 1981, was a severability section.

60-11-1103. Railroad rehabilitation revenue bonds. (1) The department is authorized to issue and sell railroad rehabilitation revenue bonds under the provisions of this part. The department of administration shall assist the department of highways in the issuance and sale of the bonds.

(2) The bonds do not constitute a debt, liability, obligation, or pledge of the faith and credit of the state but are payable solely from the revenues or assets of the department acquired or held in connection with rehabilitation projects.

History: En. Sec. 3, Ch. 564, L. 1979.

60-11-1104. Bond details. (1) The bonds may be issued as serial bonds payable in annual installments, as term bonds, or as a combination of serial and term bonds. A bond may not mature more than 50 years from its date of issue. The amount to be issued and sold at any one time shall be determined by the department. The bonds may be sold at either public or private sale and at prices above or below par as determined by the department.

(2) At the time of issuance of the bonds, the department shall specify the bond details, including but not limited to:

(a) whether serial, term, or combination thereof;

(b) the interest rate;

(c) the denominations;

(d) whether coupon or registered bonds;

(e) the manner, medium, and place of payment;

(f) whether redeemable or not and if redeemable, the manner of redemption;

(g) bond covenants.

History: **En. Sec. 4, Ch. 564, L. 1979; amd. Sec. 2, Ch. 486, L. 1981.**

Compiler's Comments

1981 Amendment: Inserted "above or below par as" after "prices" near the end of (1).

Severability: Section 16, Ch. 486, L. 1981, was a severability section.

60-11-1105. Bond limitations. (1) The interest rate or rates on the bonds shall be determined by the department. The total amount of bonds outstanding at any one time may not exceed $25 million.

(2) Each bond must have printed on its face a statement that the state is not liable on the bond, the bond is not a debt of the state, and neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal or the interest on the bond.

History: **En. Sec. 5, Ch. 564, L. 1979; amd. Sec. 3, Ch. 486, L. 1981.**

Compiler's Comments

1981 Amendment: Rewrote (1) to allow the department to determine rates of interest on bonds; and deleted a provision that the bonds not be sold below par.

Severability: Section 16, Ch. 486, L. 1981, was a severability section.

60-11-1106. Bond covenants. The department may enter into covenants with the bondholders by resolution, trust indenture, or other appropriate security instrument to enhance the marketability of the bonds. These covenants may relate to:

(1) the purpose to which the bond proceeds are to be applied;

(2) the use and disposition of the revenue of a project to which the bond proceeds are to be applied;

(3) the issuance of additional bonds to be paid from revenue of a project to which the bond proceeds are to be applied;

(4) the insurance to be carried on a project to which bond proceeds are to be applied;

(5) the accounting procedures and auditing powers related to a project;

(6) the terms and conditions upon which the bondholders are entitled to have a receiver appointed to operate a project to which bond proceeds are to be applied;

(7) the maintenance of a required capital reserve;

(8) the granting of a mortgage and security interest in the project and other properties of the borrower to secure the bonds;

(9) such other matters as the department considers customary and appropriate to secure the bonds.

History: **En. Sec. 6, Ch. 564, L. 1979; amd. Sec. 4, Ch. 486, L. 1981.**

Compiler's Comments

1981 Amendment: Inserted "by resolution, trust indenture, or other appropriate security instrument" after "with the bondholders" in the first sentence of the section; added subsections (8) and (9).

Severability: Section 16, Ch. 486, L. 1981, was a severability section.

60-11-1107. Bond accounts — appropriation. (1) There is a railroad rehabilitation account in the bond proceeds and insurance clearance fund provided for in 17-2-102. All bond proceeds shall be placed in the railroad rehabilitation account, and all money deposited in the account is continuously appropriated to the department and may be expended by the department for the purposes authorized in this part.

(2) There is a railroad rehabilitation reserve account in the sinking fund provided for in 17-2-102. Loan repayments and required capital reserves shall be deposited in the railroad rehabilitation reserve account, and all money deposited in the account is continuously appropriated to the department and may be expended for the payment of principal and interest on the bonds as they become due.

(3) If the department enters into a trust indenture pursuant to 60-11-1106, it may provide for the establishment of funds and accounts to be held by the trustee and may pledge and appropriate the bond proceeds, capital reserves, and loan payments to such funds and accounts notwithstanding the provisions of subsections (1) and (2).

History: En. Sec. 7, Ch. 564, L. 1979; amd. Sec. 5, Ch. 486, L. 1981.

Compiler's Comments

1981 Amendment: Added subsection (3).

Severability: Section 16, Ch. 486, L. 1981, was a severability section.

60-11-1108. Financial administration. The department shall institute strict accounting procedures and take whatever steps are required by the federal government in the financial administration of bond proceeds and loan accounts.

History: En. Sec. 8, Ch. 564, L. 1979.

60-11-1109. Refunding bonds. (1) The department may issue railroad rehabilitation refunding revenue bonds. These bonds are subject to the same provisions as the railroad rehabilitation revenue bonds.

(2) Refunding bonds may be sold or exchanged for outstanding bonds. The proceeds may be applied to the purchase, redemption, or repayment of outstanding bonds, and if not prevented by agreement with the bondholders, the proceeds may be invested as provided in Title 17, chapter 6, pending use of the proceeds for the purchase, redemption, or repayment of outstanding bonds.

History: En. Sec. 9, Ch. 564, L. 1979.

60-11-1110. Tax exemption. Bonds and refunding bonds, their transfer, and their income (including any profits made on their sale) are free from taxation by the state or any political subdivision or instrumentality of the state, except for inheritance and estate taxes.

History: En. Sec. 10, Ch. 564, L. 1979.

60-11-1111. Use of bond proceeds. (1) The proceeds of the bonds shall be used by the department to make loans to persons for financing rehabilitation projects on rail lines in Montana.

(2) The revenue from the project shall be used for repayment of the loan.

History: En. Sec. 11, Ch. 564, L. 1979.

60-11-1112. Loan details. The terms of any loan made pursuant to 60-11-1111 shall be specified by the department and shall be such as to assure sufficient payments to meet the obligations on the bonds. Any terms required under an agreement with the bondholder must be included in the loan agreement. The department may require the borrower to secure the loan with the project or other property of the borrower.

History: En. Sec. 12, Ch. 564, L. 1979; amd. Sec. 6, Ch. 486, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "the project or other property of the borrower" for "property" at the end of the section.

Severability: Section 16, Ch. 486, L. 1981, was a severability section.

60-11-1113. Administration of loans. (1) The department shall develop forms and application procedures to enable a person to secure a loan authorized by 60-11-1111. Loans may only be made to persons the department determines to be capable of repaying the loan. The department shall develop criteria for this determination.

(2) Preference in making loans must be given to persons who intend to use the loan proceeds in such a manner as to create new jobs in Montana.

History: En. Sec. 13, Ch. 564, L. 1979.

Part 12

Rolling Stock Revenue Bonds

60-11-1201. Intent. It is the intent of the legislature to provide a mechanism to alleviate the shortage of railroad rolling stock in Montana and to stimulate the economy of the state by strengthening the rail transportation system and by providing jobs for more Montanans.

History: En. Sec. 1, Ch. 565, L. 1979.

60-11-1202. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Bonds" means railroad rolling stock revenue bonds authorized by 60-11-1203.

(2) "Department" means the department of commerce.

(3) "Person" means an individual or a partnership, association, corporation, or other business entity.

(4) "Project" or "rolling stock project" means a business undertaking to manufacture, repair, purchase, or lease rolling stock and to subsequently use, sell, or lease the rolling stock to derive revenue.

(5) "Railroad rolling stock" or "rolling stock" means railroad cargo carriers used to transport grain, coal, ore, lumber, freight, and commodities.

(6) "Refunding bonds" means railroad rolling stock refunding revenue bonds authorized by 60-11-1209.

History: En. Sec. 2, Ch. 565, L. 1979; amd. Sec. 7, Ch. 486, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "commerce" for "highways" in (2); inserted "repair" after "to manufacture" in (4); added "coal, ore, lumber, freight, and commodities" to the end of subsection (5).

Coordination Instruction: Section 15, Ch. 486, L. 1981, provided: "If the 47th legislature passes a bill creating a department of commerce and that bill is approved, then the definition of "department" contained in 60-11-1102(2) and 60-11-1202(2) shall be changed to read "means the department of commerce"."

Severability: Section 16, Ch. 486, L. 1981, was a severability section.

60-11-1203. Railroad rolling stock revenue bonds. (1) The department is authorized to issue and sell railroad rolling stock revenue bonds under the provisions of this part. The department of administration shall assist the department of highways in the issuance and sale of the bonds.

(2) The bonds do not constitute a debt, liability, obligation, or pledge of the faith and credit of the state but are payable solely from the revenues or assets of the department acquired or held in connection with rolling stock projects.

History: En. Sec. 3, Ch. 565, L. 1979.

60-11-1204. Bond details. (1) The bonds may be issued as serial bonds payable in annual installments, as term bonds, or as a combination of serial and term bonds. A bond may not mature more than 50 years from its date of issue. The amount to be issued and sold at any one time shall be determined by the department. The bonds may be sold at either public or private sale and at prices above or below par as determined by the department.

(2) At the time of issuance of the bonds, the department shall specify the bond details, including but not limited to:

(a) whether serial, term, or combination thereof;
(b) the interest rate;
(c) the denominations;
(d) whether coupon or registered bonds;
(e) the manner, medium, and place of payment;
(f) whether redeemable or not and if redeemable, the manner of redemption;
(g) bond covenants.

History: En. Sec. 4, Ch. 565, L. 1979; amd. Sec. 8, Ch. 486, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "above or below par as" after "prices" near the end of (1).

Severability: Section 16, Ch. 486, L. 1981, was a severability section.

60-11-1205. Bond limitations. (1) The interest rate or rates on the bonds shall be determined by the department. The total amount of bonds outstanding at any one time may not exceed $75 million.

(2) Each bond must have printed on its face a statement that the state is not liable on the bond, the bond is not a debt of the state, and neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal or the interest on the bond.

History: En. Sec. 5, Ch. 565, L. 1979; amd. Sec. 9, Ch. 486, L. 1981.

Compiler's Comments

1981 Amendment: Rewrote (1) to allow the department to determine the interest rates on bonds; and deleted a provision that the bonds not be sold at less than par.

Severability: Section 16, Ch. 486, L. 1981, was a severability section.

60-11-1206. Bond covenants. The department may enter into covenants with the bondholders by resolution, trust indenture, or other appropriate instrument to enhance the marketability of the bonds. These covenants may relate to:

(1) the purpose to which the bond proceeds are to be applied;

(2) the use and disposition of the revenue of a project to which the bond proceeds are to be applied;

(3) the issuance of additional bonds to be paid from revenue of a project to which the bond proceeds are to be applied;

(4) the insurance to be carried on a project to which bond proceeds are to be applied;

(5) the accounting procedures and auditing powers related to a project;

(6) the terms and conditions upon which the bondholders are entitled to have a receiver appointed to operate a project to which bond proceeds are to be applied;

(7) the maintenance of a required capital reserve;

(8) the granting of a mortgage and security interest in the project and other properties of the borrower to secure the bonds;

(9) such other matters as the department considers customary and appropriate to secure the bonds.

History: En. Sec. 6, Ch. 565, L. 1979; amd. Sec. 10, Ch. 486, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "by resolution, trust indenture, or other appropriate instrument" after "bondholders" in the first sentence of the section; added subsections (8) and (9).

Severability: Section 16, Ch. 486, L. 1981, was a severability section.

60-11-1207. Bond accounts — appropriation. (1) There is a railroad rolling stock account in the bond proceeds and insurance clearance fund provided for in 17-2-102. All bond proceeds shall be placed in the railroad rolling stock account, and all money deposited in the account is continuously appropriated to the department and may be expended by the department for the purposes authorized in this part.

(2) There is a railroad rolling stock reserve account in the sinking fund provided for in 17-2-102. Loan repayments and required capital reserves shall be deposited in the railroad rolling stock reserve account, and all money deposited in the account is continuously appropriated to the department and may be expended for the payment of principal and interest on the bonds as they become due.

(3) If the department enters into a trust indenture pursuant to 60-11-1206, it may provide for the establishment of funds and accounts to be held by the trustee and may pledge and appropriate the bond proceeds, capital reserves, and loan payments to such funds and accounts, notwithstanding the provisions of subsections (1) and (2).

History: En. Sec. 7, Ch. 565, L. 1979; amd. Sec. 11, Ch. 486, L. 1981.

Compiler's Comments

1981 Amendment: Added subsection (3).

Severability: Section 16, Ch. 486, L. 1981, was a severability section.

60-11-1208. Financial administration. The department shall institute strict accounting procedures and take whatever steps are required by the federal government in the financial administration of bond proceeds and loan accounts.

History: En. Sec. 8, Ch. 565, L. 1979.

60-11-1209. Refunding bonds. (1) The department may issue railroad rolling stock refunding revenue bonds. These bonds are subject to the same provisions as the railroad rolling stock revenue bonds.

(2) Refunding bonds may be sold or exchanged for outstanding bonds. The proceeds may be applied to the purchase, redemption, or repayment of

outstanding bonds, and if not prevented by agreement with the bondholders, the proceeds may be invested as provided in Title 17, chapter 6, pending use of the proceeds for the purchase, redemption, or repayment of outstanding bonds.

History: En. Sec. 9, Ch. 565, L. 1979.

60-11-1210. Tax exemption. Bonds and refunding bonds, their transfer, and their income (including any profits made on their sale) are free from taxation by the state or any political subdivision or instrumentality of the state, except for inheritance and estate taxes.

History: En. Sec. 10, Ch. 565, L. 1979.

60-11-1211. Use of bond proceeds. (1) The proceeds of the bonds shall be used by the department to make loans to persons doing business or resident in Montana for financing rolling stock projects when the rolling stock is to be based in Montana and used primarily for the transport of grain, coal, ore, lumber, freight, and commodities produced in Montana.

(2) The revenue from the sale or use of the rolling stock shall be used for repayment of the loans.

History: En. Sec. 11, Ch. 565, L. 1979; amd. Sec. 12, Ch. 486, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "based in Montana" for "used primarily in Montana" near the middle of (1); inserted "coal, ore, lumber, freight, and commodities" after "grain" in (1).

Severability: Section 16, Ch. 486, L. 1981, was a severability section.

60-11-1212. Loan details. The terms of any loan made pursuant to 60-11-1211 shall be specified by the department and shall be such as to assure sufficient payments to enable the department to meet its obligations on the bonds. Any terms required under an agreement with the bondholder must be included in the loan agreement. The department may require the borrower to secure the loan with the project or other property of the borrower.

History: En. Sec. 12, Ch. 565, L. 1979; amd. Sec. 13, Ch. 486, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "project" for "rolling stock" after "with the" near the end of the section; added "of the borrower" to the end of the section.

Severability: Section 16, Ch. 486, L. 1981, was a severability section.

60-11-1213. Administration of loans. (1) The department shall develop forms and application procedures to enable a person to secure a loan authorized by 60-11-1211. Loans may only be made to persons the department determines to be capable of repaying the loan. The department shall develop criteria for this determination.

(2) Preference in making loans shall be given to persons who intend to use the loan proceeds in such a manner as to create new jobs in Montana.

(3) The loan agreement may provide for a reduction in loan interest with the reduction proportional to the amount of time the rolling stock is located in Montana. The interest rate may not be reduced below the level required to meet obligations on the bonds or required by agreement with the bondholders.

History: En. Sec. 13, Ch. 565, L. 1979.

TITLE 61

MOTOR VEHICLES

Ch.
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5. Drivers' Licenses.
6. Responsibility of Vehicle Users and Owners.
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CHAPTER 1

DEFINITIONS

Part 1 — Vehicles

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Part 1

Vehicles

61-1-101. Definitions. Unless the context indicates otherwise, the words and phrases defined in this chapter have, as used in this title, the meanings respectively ascribed to them in this chapter.

History: En. Sec. 2, Ch. 267, L. 1947; R.C.M. 1947, 31-118; amd. Sec. 1, Ch. 421, L. 1979.

61-1-102. Motor vehicle. "Motor vehicle" means every vehicle propelled by its own power and designed primarily to transport persons or property upon the highways of the state, except that for the purpose of chapter 3, the term also includes trailers, semitrailers, and housetrailers. The term does not include a bicycle as defined in 61-1-123.

History: Ap.p. Sec. 6-215, Ch. 197, L. 1965; amd. Sec. 5, Ch. 290, L. 1967; amd. Sec. 119, Ch. 316, L. 1974; amd. Sec. 15, Ch. 74, L. 1975; Sec. 32-3315, R.C.M. 1947; Ap.p. Sec. 4, Ch. 75, L. 1917; re-en. Sec. 1758, R.C.M. 1921; amd. Sec. 2, Ch. 159, L. 1933; re-en. Sec. 1758, R.C.M. 1935; amd. Sec. 5, Ch. 72, L. 1937; amd. Sec. 1, Ch. 148, L. 1943; amd. Sec. 1, Ch. 63, L. 1945; amd. Sec. 1, Ch. 115, L. 1953; amd. Sec. 1, Ch. 200, L. 1955; amd. Sec. 1, Ch. 139, L. 1961; amd. Sec. 7, Ch. 127, L. 1969; amd. Sec. 1, Ch. 179, L. 1971; amd. Sec. 1, Ch. 104, L. 1975; Sec. 53-107, R.C.M. 1947; R.C.M. 1947, 32-3315(part), 53-107(part); amd. Sec. 2, Ch. 421, L. 1979; amd. Sec. 2, Ch. 508, L. 1979.

61-1-103. Vehicle. "Vehicle" means every device in, upon, or by which any person or property may be transported or drawn upon a public highway, except devices moved by human or animal power or used exclusively upon stationary rails or tracks. However, in chapters 3 and 4, the term means "motor vehicle" as defined in this part. The term does not include a bicycle as defined in 61-1-123.

History: Ap.p. Sec. 3, Ch. 267, L. 1947; amd. Sec. 1, Ch. 291, L. 1973; Sec. 31-119, R.C.M. 1947; Ap.p. Sec. 12, Ch. 75, L. 1917; amd. Sec. 3, Ch. 207, L. 1919; re-en. Sec. 1763, R.C.M. 1921; re-en. Sec. 1763, R.C.M. 1935; amd. Sec. 4, Ch. 88, L. 1943; amd. Sec. 1, Ch. 139, L. 1945; amd. Sec. 1, Ch. 199, L. 1947; amd. Sec. 4, Ch. 256, L. 1965; Sec. 53-133, R.C.M. 1947; R.C.M. 1947, 31-119(a), 53-133(i); amd. Sec. 3, Ch. 421, L. 1979; amd. Sec. 3, Ch. 508, L. 1979.

61-1-104. Special mobile equipment. "Special mobile equipment" means every vehicle not designed or used primarily for the transportation of persons or property and incidentally operated or moved over the highways, including farm tractors, road construction or maintenance machinery, ditch-digging apparatus, well-boring apparatus, and concrete mixers. The foregoing enumeration is partial and does not exclude other such vehicles which are within the general terms of this section.

History: En. Sec. 2, Ch. 263, L. 1955; amd. Sec. 1, Ch. 153, L. 1975; R.C.M. 1947, 32-21-2(j); amd. Sec. 4, Ch. 421, L. 1979.

61-1-105. Motorcycle. "Motorcycle" means a motor vehicle having not more than three wheels in contact with the ground and a saddle on which the operator sits or a platform on which he stands and a driving wheel in contact with the ground in addition to the wheels of the vehicle itself. A motorcycle may carry one or more attachments and a seat for the conveyance of a passenger. The term does not include a tractor or a bicycle as defined in 61-1-123.

History: En. Sec. 12, Ch. 75, L. 1917; amd. Sec. 3, Ch. 207, L. 1919; re-en. Sec. 1763, R.C.M. 1921; re-en. Sec. 1763, R.C.M. 1935; amd. Sec. 4, Ch. 88, L. 1943; amd. Sec. 1, Ch. 139, L. 1945;

amd. Sec. 1, Ch. 199, L. 1947; amd. Sec. 4, Ch. 256, L. 1965; R.C.M. 1947, 53-133(b); amd. Sec. 5, Ch. 421, L. 1979; amd. Sec. 4, Ch. 508, L. 1979.

61-1-106. Motor-driven cycle. "Motor-driven cycle" means every motorcycle, including every motor scooter, with a motor which produces not to exceed 5 horsepower. The term does not include a bicycle as defined in 61-1-123.

History: En. Sec. 2, Ch. 263, L. 1955; amd. Sec. 1, Ch. 153, L. 1975; R.C.M. 1947, 32-2102(d); amd. Sec. 5, Ch. 508, L. 1979.

61-1-107. Truck. "Truck" or "motortruck" means every motor vehicle designed, used, or maintained primarily for the transportation of property.

History: En. Sec. 4, Ch. 263, L. 1955; R.C.M. 1947, 32-2104(a); amd. Sec. 6, Ch. 421, L. 1979.

61-1-108. Truck tractor. "Truck tractor" means every motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle and load drawn.

History: En. Sec. 3, Ch. 263, L. 1955; R.C.M. 1947, 32-2103(a); amd. Sec. 7, Ch. 421, L. 1979.

61-1-109. Farm tractor. "Farm tractor" means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

History: En. Sec. 3, Ch. 267, L. 1947; amd. Sec. 1, Ch. 291, L. 1973; R.C.M. 1947, 31-119(c); amd. Sec. 8, Ch. 421, L. 1979.

61-1-110. Road tractor. "Road tractor" means every motor vehicle designed and used for drawing other vehicles and not so constructed as to carry any load thereon either independently or any part of the weight of a vehicle or load so drawn.

History: En. Sec. 3, Ch. 263, L. 1955; R.C.M. 1947, 32-2103(c).

61-1-111. Trailer. "Trailer" means every vehicle, with or without motive power (other than a pole trailer), designed for carrying property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle, except that as used in chapters 3 and 4 the term includes every vehicle without motive power designed to carry property or passengers wholly on its own structure and to be drawn by a motor vehicle.

History: Ap.p. Sec. 5, Ch. 263, L. 1955; amd. Sec. 1, Ch. 204, L. 1957; Sec. 32-2105, R.C.M. 1947; Ap.p. Sec. 12, Ch. 75, L. 1917; amd. Sec. 3, Ch. 207, L. 1919; re-en. Sec. 1763, R.C.M. 1921; re-en. Sec. 1763, R.C.M. 1935; amd. Sec. 4, Ch. 88, L. 1943; amd. Sec. 1, Ch. 139, L. 1945; amd. Sec. 1, Ch. 199, L. 1947; amd. Sec. 4, Ch. 256, L. 1965; Sec. 53-133, R.C.M. 1947; R.C.M. 1947, 32-2105(a), 53-133(d); amd. Sec. 9, Ch. 421, L. 1979.

61-1-112. Semitrailer. "Semitrailer" means every vehicle, with or without motive power (other than a pole trailer), designed for carrying property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle, except that as used in chapters 3 and 4 the term includes a pole trailer.

History: Ap.p. Sec. 5, Ch. 263, L. 1955; amd. Sec. 1, Ch. 204, L. 1957; Sec. 32-1205, R.C.M. 1947; Ap.p. Sec. 12, Ch. 75, L. 1917; amd. Sec. 3, Ch. 207, L. 1919; re-en. Sec. 1763, R.C.M. 1921; re-en. Sec. 1763, R.C.M. 1935; amd. Sec. 4, Ch. 88, L. 1943; amd. Sec. 1, Ch. 139, L. 1945; amd. Sec. 1,

Ch. 199, L. 1947; amd. Sec. 4, Ch. 256, L. 1965; Sec. 53-133, R.C.M. 1947; R.C.M. 1947, 32-2105(b), 53-133(e); amd. Sec. 10, Ch. 421, L. 1979.

61-1-113. Dolly or converter gear. "Dolly or converter gear" means a device consisting of one or two axles with a fifth wheel and trailer tongue used to support the forward end of a semitrailer, thereby converting a semitrailer into a trailer.

History: En. 32-1123.2 by Sec. 13, Ch. 316, L. 1974; amd. Sec. 1, Ch. 269, L. 1977; R.C.M. 1947, 32-1123.2(7).

61-1-114. Pole trailer. "Pole trailer" means every vehicle without power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole or by being boomed or otherwise secured to the towing vehicle and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural members capable generally of sustaining themselves as beams between the supporting connections.

History: En. Sec. 5, Ch. 263, L. 1955; amd. Sec. 1, Ch. 204, L. 1957; R.C.M. 1947, 32-2105(c).

61-1-115. Bus. "Bus" means every motor vehicle designed for carrying more than 10 passengers and used for the transportation of persons and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

History: En. Sec. 3, Ch. 267, L. 1947; amd. Sec. 1, Ch. 291, L. 1973; Sec. 31-119, R.C.M. 1947; R.C.M. 1947, 31-119(e).

61-1-116. School bus. "School bus" means every motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school or privately owned and operated for compensation for the transportation of children to or from school.

History: En. Sec. 3, Ch. 267, L. 1947; amd. Sec. 1, Ch. 291, L. 1973; Sec. 31-119, R.C.M. 1947; R.C.M. 1947, 31-119(d).

61-1-117. Used motor vehicle. The term "used motor vehicle" as used in chapters 3 and 4 shall include any motor vehicle which has been sold, bargained, exchanged, given away, or title transferred from the person who first took title to it from the manufacturer, importer, dealer, or agent of the manufacturer or importer, and so used as to have become what is commonly known as "second hand" within the ordinary meaning thereof.

History: En. Sec. 12, Ch. 75, L. 1917; amd. Sec. 3, Ch. 207, L. 1919; re-en. Sec. 1763, R.C.M. 1921; re-en. Sec. 1763, R.C.M. 1935; amd. Sec. 4, Ch. 88, L. 1943; amd. Sec. 1, Ch. 139, L. 1945; amd. Sec. 1, Ch. 199, L. 1947; amd. Sec. 4, Ch. 256, L. 1965; R.C.M. 1947, 53-133(j).

61-1-118. Police vehicle. "Police vehicle" means any vehicle used in the service of any law enforcement agency.

History: En. Sec. 2, Ch. 263, L. 1955; amd. Sec. 1, Ch. 153, L. 1975; R.C.M. 1947, 32-2102(e).

61-1-119. Authorized emergency vehicles. "Authorized emergency vehicles" means vehicles of the fire department, fire patrol, and such ambulances and emergency vehicles as are designated or authorized by the division.

History: En. Sec. 2, Ch. 263, L. 1955; amd. Sec. 1, Ch. 153, L. 1975; R.C.M. 1947, 32-2102(f).

61-1-120. Emergency service vehicles. "Emergency service vehicles" means emergency service vehicles of state, county, or municipal departments, or public service vehicles, which by the nature of their operation cause a vehicular traffic hazard; or authorized tow cars.

History: En. Sec. 2, Ch. 263, L. 1955; amd. Sec. 1, Ch. 153, L. 1975; R.C.M. 1947, 32-2102(g).

61-1-121. Implement of husbandry. "Implement of husbandry" means every vehicle which is designed for agricultural purposes and exclusively used by the owner thereof in the conduct of his agricultural operations.

History: En. Sec. 21.2, Ch. 263, L. 1955; R.C.M. 1947, 32-2123(b).

61-1-122. Trackless trolley coach. "Trackless trolley coach" means every motor vehicle which is propelled by electric power obtained from overhead trolley wires but not operated upon rails.

History: En. Sec. 4, Ch. 263, L. 1955; R.C.M. 1947, 32-2104(c).

61-1-123. Bicycle. "Bicycle" means:

(1) every device propelled by human power upon which any person may ride, having two tandem wheels either of which is more than 20 inches in diameter; or

(2) every device equipped with two or three wheels, foot pedals to permit muscular propulsion and an independent power source providing a maximum of two brake horsepower. If a combustion engine is used, the maximum piston or rotor displacement may not exceed 3.05 cubic inches (50 centimeters) regardless of the number of chambers in the power source. The power source must not be capable of propelling the device, unassisted, at a speed exceeding 30 miles an hour (48.28 kilometers an hour) on a level surface. The device must be equipped with a power drive system that functions directly or automatically only and does not require clutching or shifting by the operator after the drive system is engaged.

History: En. Sec. 2, Ch. 263, L. 1955; amd. Sec. 1, Ch. 153, L. 1975; R.C.M. 1947, 32-2102(i); amd. Sec. 6, Ch. 508, L. 1979.

61-1-124. Railroad train. "Railroad train" means a steam engine or electric or other motor, with or without cars coupled thereto, operated upon rails, except streetcars.

History: En. Sec. 7, Ch. 263, L. 1955; R.C.M. 1947, 32-2107(b).

61-1-125. Pneumatic tire. "Pneumatic tire" means every tire in which compressed air is designed to support the load.

History: En. Sec. 6, Ch. 263, L. 1955; R.C.M. 1947, 32-2106(a).

61-1-126. Solid tire. "Solid tire" means every tire of rubber or other resilient material which does not depend upon compressed air for the support of the load.

History: En. Sec. 6, Ch. 263, L. 1955; R.C.M. 1947, 32-2106(b).

61-1-127. Metal tire. "Metal tire" means every tire the surface of which in contact with the highway is wholly or partly metal or other hard nonresilient material.

History: En. Sec. 6, Ch. 263, L. 1955; R.C.M. 1947, 32-2106(c).

61-1-128. Axle. "Axle" means a transverse beam which is the common axis of rotation of one or more wheels and which, to receive credit for allowable total gross loading, must be capable of continuously transmitting a proportionate share of the total gross load to the roadway when the axle is in operation.

History: En. 32-1123.2 by Sec. 13, Ch. 316, L. 1974; amd. Sec. 1, Ch. 269, L. 1977; R.C.M. 1947, 32-1123.2(8).

61-1-129. Camper. The term "camper" as used in 61-3-524 and 61-3-525 includes but is not limited to truck camper, chassis-mounted camper, cab over, half cab over, non cab over, telescopic, and telescopic cab over, but does not include a truck canopy cover or topper weighing less than 300 pounds and having no accommodations attached.

History: En. Sec. 1, Ch. 414, L. 1973; amd. Sec. 1, Ch. 112, L. 1977; R.C.M. 1947, 53-644.

61-1-130. Motor home. "Motor home" as used in 61-3-521 and 61-3-522 means a self-propelled motor vehicle originally designed or permanently altered to provide temporary facilities for recreational, travel, or camping use.

History: En. Sec. 5, Ch. 712, L. 1979.

61-1-131. Travel trailer. "Travel trailer" as used in 61-3-521 and 61-3-523 means a trailer 32 feet or less in length and 8 feet or less in width originally designed or permanently altered to provide temporary facilities for recreational, travel, or camping use.

History: En. Sec. 6, Ch. 712, L. 1979.

61-1-132. Recreational vehicle. The term "recreational vehicle" as used in 61-4-101 through 61-4-105 includes travel trailers as defined in 61-1-131, motor homes as defined in 61-1-130, and other self-propelled vehicles originally designed or permanently altered to provide temporary facilities for recreational, travel, or camping use.

History: En. Sec. 1, Ch. 443, L. 1981.

Compiler's Comments

Codification Instruction: Section 5, Ch. 443, L. 1981, provided: "Section 1 is intended to be codified as an integral part of Title 61, chapter 1, part 1, and the provisions of Title 61 apply to section 1."

Part 2

Roads

61-1-201. Highway. "Highway" means the entire width between the boundary lines of every publicly maintained way when any part thereof is open to the use of the public for purposes of vehicular travel, except that for the purpose of chapter 8 the term also includes ways which have been or shall be dedicated to public use.

History: En. Sec. 6, Ch. 267, L. 1947; R.C.M. 1947, 31-122(part); amd. Sec. 11, Ch. 421, L. 1979.

61-1-202. Public highway. "Public highway" means "highway" as defined in 61-1-201.

History: En. Sec. 7, Ch. 242, L. 1971; Sec. 32-1638, R.C.M. 1947; amd. and redes. 32-1631.1 by Sec. 48, Ch. 316, L. 1974; R.C.M. 1947, 32-1631.1; amd. Sec. 12, Ch. 421, L. 1979.

61-1-203. Street. "Street" means the entire width between the boundary lines of every publicly maintained way when any part thereof is open to the use of the public for purposes of vehicular travel.

History: En. Sec. 6, Ch. 267, L. 1947; R.C.M. 1947, 31-122(part); amd. Sec. 13, Ch. 421, L. 1979.

61-1-204. Arterial street. "Arterial street" means any U. S. or state numbered route, controlled-access highway, or other major radial or circumferential street or highway designated by local authorities within their respective jurisdictions as part of a major arterial system or highway.

History: En. Sec. 21.2, Ch. 263, L. 1955; R.C.M. 1947, 32-2123(a).

61-1-205. Private road or driveway. "Private road" or "driveway" means every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

History: En. Sec. 14, Ch. 263, L. 1955; amd. Sec. 2, Ch. 247, L. 1959; R.C.M. 1947, 32-2114(b).

61-1-206. Roadway. "Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a highway includes two or more separate roadways the term "roadway" as used herein shall refer to any such roadway separately but not to all such roadways collectively.

History: En. Sec. 14, Ch. 263, L. 1955; amd. Sec. 2, Ch. 247, L. 1959; R.C.M. 1947, 32-2114(c).

61-1-207. Laned roadway. "Laned roadway" means a roadway which is divided into two or more clearly marked lanes for vehicular traffic.

History: En. Sec. 14, Ch. 263, L. 1955; amd. Sec. 2, Ch. 247, L. 1959; R.C.M. 1947, 32-2114(e).

61-1-208. Sidewalk. "Sidewalk" means that portion of a street between the curb lines or the lateral lines of a roadway, and the adjacent property lines, intended for use of pedestrians.

History: En. Sec. 14, Ch. 263, L. 1955; amd. Sec. 2, Ch. 247, L. 1959; R.C.M. 1947, 32-2114(d).

61-1-209. Crosswalk. "Crosswalk" means:

(1) that part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway;

(2) any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrians crossing by lines or other markings on the surface.

History: En. Sec. 16, Ch. 263, L. 1955; R.C.M. 1947, 32-2116.

61-1-210. Through highway. "Through highway" means every highway or portion thereof at the entrances to which vehicular traffic from intersecting highways is required by law to stop before entering or crossing the same and when stop signs are erected as provided in chapter 8 of this title.

History: En. Sec. 14, Ch. 263, L. 1955; amd. Sec. 2, Ch. 247, L. 1959; R.C.M. 1947, 32-2114(f).

61-1-211. Controlled-access highway. "Controlled-access highway" means every highway, street, or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the same except at such points only and in such manner as may be determined by the public authority having jurisdiction over such highway, street, or roadway.

History: **En. Sec. 14, Ch. 263, L. 1955; amd. Sec. 2, Ch. 247, L. 1959; R.C.M. 1947, 32-2114(g).**

61-1-212. Intersection. (1) "Intersection" means the area embraced within the prolongation or connection of the lateral curb lines or if none then the lateral boundary lines of the roadways of two highways which join one another at or approximately at right angles or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict.

(2) Where a highway includes two roadways 30 feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event such intersecting highway also includes two roadways 30 feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection.

History: **En. Sec. 15, Ch. 263, L. 1955; R.C.M. 1947, 32-2115.**

Part 3

Persons — Agencies

61-1-301. Division. "Division" means the division of motor vehicles acting directly or through its duly authorized officers or agents.

History: **En. Sec. 7, Ch. 267, L. 1947; amd. Sec. 1, Ch. 155, L. 1969; R.C.M. 1947, 31-123(b).**

61-1-302. Chief. "Chief" means the chief of the Montana highway patrol.

History: **En. Sec. 7, Ch. 267, L. 1947; amd. Sec. 1, Ch. 155, L. 1969; R.C.M. 1947, 31-123(a).**

61-1-303. Commission. "Commission" means the state highway commission.

History: **En. Sec. 10, Ch. 263, L. 1955; R.C.M. 1947, 32-2110(c).**

61-1-304. Police officer. "Police officer" means every officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

History: **En. Sec. 12, Ch. 263, L. 1955; R.C.M. 1947, 32-2112(part).**

61-1-305. Highway patrolman. "Highway patrolman" means every state officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

History: **En. Sec. 12, Ch. 263, L. 1955; R.C.M. 1947, 32-2112(part); amd. Sec. 14, Ch. 421, L. 1979.**

61-1-306. Local authorities. "Local authorities" means every county, municipal, and other local board or body having authority to enact laws relating to traffic under the constitution and laws of this state.

History: **En. Sec. 13, Ch. 263, L. 1955; R.C.M. 1947, 32-2113.**

61-1-307. Person. "Person" means an individual, corporation, partnership, association, firm, or other legal entity. "Person" as used in part 1, chapter 6, means every natural person, firm, partnership, association, or corporation.

History: Ap.p. Sec. 1, Ch. 381, L. 1977; Sec. 51-609, R.C.M. 1947; Ap.p. Sec. 1, Ch. 204, L. 1951; amd. Sec. 1, Ch. 30, L. 1967; Sec. 53-418, R.C.M. 1947; R.C.M. 1947, 51-609(4), 53-418(11); amd. Sec. 15, Ch. 421, L. 1979.

61-1-308. Pedestrian. "Pedestrian" means any person afoot.

History: En. Sec. 11, Ch. 263, L. 1955; R.C.M. 1947, 32-2111(b).

61-1-309. Driver. "Driver" means every person who drives or is in actual physical control of a vehicle.

History: En. Sec. 11, Ch. 263, L. 1955; R.C.M. 1947, 32-2111(c).

61-1-310. Owner. "Owner" means a person who holds the legal title to a vehicle. If a vehicle is the subject of an agreement for the conditional sale thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee, or in the event a vehicle is subject to a lease, contract, or other legal arrangement vesting right of possession or control, for security or otherwise, or in the event a mortgagor of a vehicle is entitled to possession, then the owner is the person in whom is vested right of possession or control.

History: En. Sec. 2, Ch. 206, L. 1963; amd. Sec. 190, Ch. 316, L. 1974; R.C.M. 1947, 53-702(3); amd. Sec. 16, Ch. 421, L. 1979.

61-1-311. Operator. "Operator" means a person who is in actual physical control of a motor vehicle.

History: En. Sec. 1, Ch. 204, L. 1951; amd. Sec. 1, Ch. 30, L. 1967; R.C.M. 1947, 53-418(9); amd. Sec. 17, Ch. 421, L. 1979.

61-1-312. Chauffeur. "Chauffeur" means every person who is employed by another for the principal purpose of driving a motor vehicle and every person who drives a school bus transporting school children or any motor vehicle when in use for the transportation of persons or property for compensation but shall not include persons driving farm trucks or hauling farm products for producers of said farm products.

History: En. Sec. 4, Ch. 267, L. 1947; Sec. 31-120, R.C.M. 1947; R.C.M. 1947, 31-120(c).

61-1-313. Nonresident. "Nonresident" means every person who is not a resident of this state.

History: En. Sec. 5, Ch. 267, L. 1947; R.C.M. 1947, 31-121.

61-1-314. Dealer. (1) "Dealer" means any person, firm, association, or corporation which, for commission or profit, engages in whole or in part in the business of buying, selling, exchanging, or acting as a broker of either new or used motor vehicles, or both, and who qualifies for issuance of a dealer's license under 61-4-101 through 61-4-105.

(2) The term "dealer" does not include the following:

(a) receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under a judgment or order of any court of competent jurisdiction;

(b) employees of such persons when engaged in the specific performance of their duties as such employees; or

(c) public officers while performing or in the operation of their duties.

(3) A dealer dealing in used motor vehicles only shall purchase a Montana store license.

History: (1)En. Sec. 2, Ch. 144, L. 1937; Sec. 51-202, R.C.M. 1947; (2)En. 51-609 by Sec. 1, Ch. 381, L. 1977; Sec. 51-609, R.C.M. 1947; (3)En. Sec. 12, Ch. 75, L. 1917; amd. Sec. 3, Ch. 207, L. 1919; re-en. Sec. 1763, R.C.M. 1921; re-en. Sec. 1763, R.C.M. 1935; amd. Sec. 4, Ch. 88, L. 1943; amd. Sec. 1, Ch. 139, L. 1945; amd. Sec. 1, Ch. 199, L. 1947; amd. Sec. 4, Ch. 256, L. 1965; Sec. 53-133, R.C.M. 1947; R.C.M. 1947, 51-609(2), 53-133(part); amd. Sec. 18, Ch. 421, L. 1979.

61-1-315. Trailer dealer. "Trailer dealer" means any person, firm, or corporation engaged in whole or in part in the business of buying or selling trailers or semitrailers, with facilities for displaying one or more trailers or semitrailers.

History: En. Sec. 12, Ch. 75, L. 1917; amd. Sec. 3, Ch. 207, L. 1919; re-en. Sec. 1763, R.C.M. 1921; re-en. Sec. 1763, R.C.M. 1935; amd. Sec. 4, Ch. 88, L. 1943; amd. Sec. 1, Ch. 139, L. 1945; amd. Sec. 1, Ch. 199, L. 1947; amd. Sec. 4, Ch. 256, L. 1965; R.C.M. 1947, 53-133(h); amd. Sec. 19, Ch. 421, L. 1979.

61-1-316. Manufacturer. The term "manufacturer" includes any person, firm, corporation, or association engaged in the manufacture of motor vehicles, trailers, or semitrailers as a regular business.

History: En. Sec. 12, Ch. 75, L. 1917; amd. Sec. 3, Ch. 207, L. 1919; re-en. Sec. 1763, R.C.M. 1921; re-en. Sec. 1763, R.C.M. 1935; amd. Sec. 4, Ch. 88, L. 1943; amd. Sec. 1, Ch. 139, L. 1945; amd. Sec. 1, Ch. 199, L. 1947; amd. Sec. 4, Ch. 256, L. 1965; R.C.M. 1947, 53-133(part); amd. Sec. 20, Ch. 421, L. 1979.

61-1-317. Railroad. "Railroad" means a carrier of persons or property upon cars, other than streetcars, operated upon stationary rails.

History: En. Sec. 7, Ch. 263, L. 1955; R.C.M. 1947, 32-2107(a).

Part 4

Traffic Control

61-1-401. Traffic. "Traffic" means pedestrians, ridden or herded animals, vehicles, streetcars, and other conveyances either singly or together while using any highways for purposes of travel.

History: En. Sec. 20, Ch. 263, L. 1955; R.C.M. 1947, 32-2120.

61-1-402. Traffic-control signal. "Traffic-control signal" means any device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and to proceed.

History: En. Sec. 19, Ch. 263, L. 1955; amd. Sec. 1, Ch. 148, L. 1975; R.C.M. 1947, 32-2119(b).

61-1-403. Official traffic-control devices. "Official traffic-control devices" means all signs, signals, markings, and devices not inconsistent with this title, placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic. For the purpose of chapter 8, part 2, of this title, the term also includes "flag person" as defined in 61-1-411.

History: En. Sec. 19, Ch. 263, L. 1955; amd. Sec. 1, Ch. 148, L. 1975; R.C.M. 1947, 32-2119(a); amd. Sec. 21, Ch. 421, L. 1979.

61-1-404. Railroad sign or signal. "Railroad sign" or "railroad signal" means any sign, signal, or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train.

History: **En. Sec. 19, Ch. 263, L. 1955; amd. Sec. 1, Ch. 148, L. 1975; R.C.M. 1947, 32-2119(c).**

61-1-405. Safety zone. "Safety zone" means the area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.

History: **En. Sec. 17, Ch. 263, L. 1955; R.C.M. 1947, 32-2117.**

61-1-406. Right-of-way. "Right-of-way" means the privilege of the immediate use of the roadway.

History: **En. Sec. 21, Ch. 263, L. 1955; R.C.M. 1947, 32-2121.**

61-1-407. Stop, stopping, standing, and parking. (1) "Stop", when required, means complete cessation from movement.

(2) "Stop", "stopping", or "standing", when prohibited, means any stopping or standing of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer, highway patrolman, or traffic-control sign or signal.

(3) "Parking", when prohibited, means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading.

History: **En. Sec. 21.1, Ch. 263, L. 1955; R.C.M. 1947, 32-2122.**

61-1-408. Business district. "Business district" means the territory contiguous to and including a highway when within any 600 feet along such highway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks, or office buildings, railroad stations, and public buildings which occupy at least 300 feet of frontage on one side or 300 feet collectively on both sides of the highway.

History: **En. Sec. 18, Ch. 263, L. 1955; R.C.M. 1947, 32-2118(a).**

61-1-409. Residence district. "Residence district" means the territory contiguous to and including a highway not comprising a business district when the property on such highway for a distance of 300 feet or more is in the main improved with residences or residences and buildings in use for business.

History: **En. Sec. 18, Ch. 263, L. 1955; R.C.M. 1947, 32-2118(b).**

61-1-410. Urban district. "Urban district" means the territory contiguous to and including any street which is built up with structures devoted to business, industry, or dwelling houses situated at intervals of less than 100 feet for a distance of one-fourth mile or more.

History: **En. Sec. 21.2, Ch. 263, L. 1955; R.C.M. 1947, 32-2123(c).**

61-1-411. Flag person. "Flag person" means any person who directs, controls, or alters the normal flow of vehicular traffic upon a street or highway as a result of a vehicular traffic hazard then present on that street or highway. This person, except a uniformed traffic enforcement officer exercising his duty as a result of a planned vehicular traffic hazard, shall be equipped as required by the rules of the Montana department of highways.

History: En. Sec. 19, Ch. 263, L. 1955; amd. Sec. 1, Ch. 148, L. 1975; R.C.M. 1947, 32-2119(d).

61-1-412. Flag vehicle. "Flag vehicle" means any vehicle equipped as required by law or Montana department of highways regulations to warn or guide vehicular traffic. When not being operated as a flag vehicle, signs shall be removed.

History: En. Sec. 19, Ch. 263, L. 1955; amd. Sec. 1, Ch. 148, L. 1975; R.C.M. 1947, 32-2119(e).

Part 5

Miscellaneous

61-1-501. Housetrailer. "Housetrailer" means a trailer or a semitrailer which is designed, constructed, and equipped as a dwelling place, living abode, or sleeping place (either permanently or temporarily) and is equipped for use as a conveyance on streets and highways or a trailer or semitrailer whose chassis and exterior shell is designed and constructed for use as a housetrailer, as defined above, but which is used permanently or temporarily for the advertising, sales, display, or promotion of merchandise or services or for any commercial purpose except the transportation of property for hire or the transportation of property for distribution by a private carrier.

History: En. Sec. 5, Ch. 263, L. 1955; amd. Sec. 1, Ch. 204, L. 1957; R.C.M. 1947, 32-2105(d).

61-1-502. Gross weight. "Gross weight" means the weight of a vehicle without load plus the weight of any load thereon.

History: En. Sec. 9, Ch. 263, L. 1955; R.C.M. 1947, 32-2109.

61-1-503. Suspension. "Suspension" means that the driver's license and privilege to drive a motor vehicle on the public highways are temporarily withdrawn, but only during the period of such suspension.

History: En. Sec. 8, Ch. 267, L. 1947; amd. Sec. 1, Ch. 110, L. 1961; R.C.M. 1947, 31-124(a).

61-1-504. Revocation. "Revocation" means that the driver's license and privilege to drive a motor vehicle on the public highways are terminated and may not be renewed or restored. An application for a new license may be presented and acted upon by the division after the expiration of the period of the revocation.

History: En. Sec. 8, Ch. 267, L. 1947; amd. Sec. 1, Ch. 110, L. 1961; R.C.M. 1947, 31-124(b); amd. Sec. 22, Ch. 421, L. 1979.

61-1-505. Cancellation. "Cancellation" means that a driver's license is annulled and terminated because of some error or defect or because the licensee is no longer entitled to such license, but the cancellation of a license is without prejudice and application for a new license may be made at any time after such cancellation.

History: En. Sec. 8, Ch. 267, L. 1947; amd. Sec. 1, Ch. 110, L. 1961; R.C.M. 1947, 31-124(c).

61-1-506. Explosives. "Explosives" means any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion and which contains any oxidizing and combustive units or other ingredients in such proportions, quantities, or packing that an ignition by fire, friction, concussion, percussion, or detonator of any part of the compound or mixture may cause such sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or of destroying life or limb.

History: En. Sec. 8, Ch. 263, L. 1955; R.C.M. 1947, 32-2108(a).

61-1-507. Flammable liquid. "Flammable liquid" means any liquid which has a flash point of 70 degrees F or less as determined by a Tagliabue or equivalent closed cup test device.

History: En. Sec. 8, Ch. 263, L. 1955; R.C.M. 1947, 32-2108(b).

61-1-508. Registration. "Registration" means, as used in part 1, chapter 6, registration certificate or certificates and registration plates issued under the laws of this state pertaining to the registration of motor vehicles.

History: En. Sec. 1, Ch. 204, L. 1951; amd. Sec. 1, Ch. 30, L. 1967; R.C.M. 1947, 53-418(13).

61-1-509. Certificate of ownership. "Certificate of ownership" means the certificate issued by the division of motor vehicles to the transferee upon a transfer of ownership of a motor vehicle.

History: En. Sec. 23, Ch. 421, L. 1979.

CHAPTER 2

HIGHWAY SAFETY

Part 1 — Traffic Safety Program

Section
61-2-101. Purpose.
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Part 1

Traffic Safety Program

Part Compiler's Comments

Transfer of Function: Section 8(1), Ch. 274, L. 1981, provided: "The functions of the department of community affairs of administering the highway traffic safety program under 61-2-102 and 61-2-103 and of assisting in delivery of emergency medical services under 50-6-104 and 50-6-203 are transferred to the department of justice."

61-2-101. Purpose. To promote public safety, health, and welfare and to reduce traffic deaths, injuries, and property losses resulting from traffic accidents, it is in the public interest to establish a highway traffic safety program and provide for its administration. It is in the public interest to implement, modernize, and improve the following traffic safety activities: driver performance, including but not limited to driver education, driver testing to determine proficiency to operate motor vehicles; driver examinations, both physical and mental; driver licensing; pedestrian performance; establish an effective accident record system, including traffic accident investigation to determine the probable cause of accidents, injuries, and deaths; improve and establish a system of vehicle registration, vehicle operation, and vehicle inspection; assist in the improving of highway design and maintenance, including lighting, markings, and surface treatment to improve safety; establish an effective traffic control system; promote the adoption of uniform vehicle laws; provide for surveillance of traffic for detection and correction of high or potentially high accident locations; establish emergency services, including but not limited to communications, medical or mechanical assistance, and ambulance service for injured persons; and establish an effective compilation and storage program of reports and records through electronic data processing.

History: En. Sec. 1, Ch. 177, L. 1967; amd. Sec. 74, Ch. 348, L. 1974; R.C.M. 1947, 32-4601.

61-2-102. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Highway traffic safety program" means a program designed to reduce traffic accidents, deaths, injuries to persons, and damage to property. The program shall be in accordance with uniform standards established by the secretary of commerce of the United States under Title 23, U.S.C., as amended. Nothing in this part restricts or prohibits the establishment of standards which enlarge or implement the federal standards.

(2) "Political subdivisions" means every county, incorporated city or town, and school district within the boundaries of the state.

(3) "Department" means the department of justice provided for in Title 2, chapter 15, part 20.

History: En. Sec. 2, Ch. 177, L. 1967; amd. Sec. 75, Ch. 348, L. 1974; amd. Sec. 34, Ch. 213, L. 1975; R.C.M. 1947, 32-4602; amd. Sec. 8, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of justice" for "department of community affairs" and changed cite in (3).

61-2-103. Duties. (1) The governor is responsible for the administration of the highway traffic safety program. The governor may contract and do all other things necessary to secure the full benefits available to this state under the Federal Highway Safety Act of 1966, and, in so doing, may cooperate with federal and state agencies, private and public organizations, and individuals to effectuate the purposes of that enactment and all amendments to it. For purposes of participation in the Federal Highway Safety Act of 1966, the governor shall designate the superintendent of public instruction as the state agency responsible for all aspects of federally assisted driver education and safety programs in the public schools, including the approval of the programs, certification of teachers, and the acceptance, allocation, and expenditure of funds for driver education in accordance with applicable federal laws and regulations. Nothing in this part interferes with the provisions of 20-9-603 or part 5, chapter 7, of Title 20.

(2) The department of justice shall:

(a) advise and assist the governor in all matters of highway safety and establish comprehensive training programs, including establishment and regulation of driver training schools and certification of the schools and instructors and establishment of adult training and retraining programs;

(b) develop and procure practice driving facilities, simulators, and other teaching aids for school and driver training use;

(c) establish a continuing and adequate research program designed to determine the causes of accidents and effect a program of prevention;

(d) establish a uniform system of driver licensing, including mental and physical standards; and

(e) prescribe and establish safety regulations for motor vehicles and operators.

History: En. Sec. 5, Ch. 177, L. 1967; amd. Sec. 76, Ch. 348, L. 1974; amd. Sec. 35, Ch. 213, L. 1975; R.C.M. 1947, 32-4605; amd. Sec. 8, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of justice" for "department of community affairs" in the introductory clause of (2).

61-2-104. Funds. The governor and the department may enter into contracts with the federal government to secure maximum federal appropriation. At least 40% of all federal funds received by the state shall be spent by the political subdivisions of the state in carrying out local approved highway traffic safety programs. Except as provided in this part, the governor may accept all gifts, money, and funds to implement the purposes of this part. The expenditure of funds, exclusive of the federal appropriation, shall be maintained at a level which shall not fall below the average level of the expenditures for the last 2 full fiscal years preceding July 1, 1966, as determined by the expenditures of state and political subdivisions.

History: En. Sec. 6, Ch. 177, L. 1967; amd. Sec. 77, Ch. 348, L. 1974; R.C.M. 1947, 32-4606.

61-2-105. Local programs. Except as provided in this part, all highway traffic safety programs of political subdivisions must be approved by the governor and no funds may be spent unless his approval is obtained. All local and state officials shall cooperate with the governor and department to accomplish the purposes of this part. The governor shall administer the highway traffic safety programs of this state and its political subdivisions in accordance with this part and federal rules.

History: En. Sec. 7, Ch. 177, L. 1967; amd. Sec. 78, Ch. 348, L. 1974; R.C.M. 1947, 32-4607.

Part 2

Vehicle Equipment Safety

61-2-201. Vehicle Equipment Safety Compact. This part shall be known and may be cited as the "Vehicle Equipment Safety Compact".

Article I. Findings and Purposes

(1) The party states find that:

(a) accidents and deaths on their streets and highways present a very serious human and economic problem with a major deleterious effect on the public welfare;

(b) there is a vital need for the development of greater interjurisdictional cooperation to achieve the necessary uniformity in the laws, rules, regulations, and codes relating to vehicle equipment, and to accomplish this by such means as will minimize the time between the development of demonstrably and scientifically sound safety features and their incorporation into vehicles.

(2) The purposes of this compact are to: (a) promote uniformity in regulation of and standards for equipment;

(b) secure uniformity of law and administrative practice in vehicular regulation and related safety standards to permit incorporation of desirable equipment changes in vehicles in the interest of greater traffic safety;

(c) provide means for the encouragement and utilization of research which will facilitate the achievement of the foregoing purposes, with due regard for the findings set forth in subsection (1) of this article.

(3) It is the intent of this compact to emphasize performance requirements and not to determine the specific detail of engineering in the manufacture of vehicles or equipment except to the extent necessary for the meeting of such performance requirements.

Article II. Definitions

As used in this compact:

(1) "Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

(2) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(3) "Equipment" means any part of a vehicle or any accessory for use thereon which affects the safety of operation of such vehicle or the safety of the occupants.

Article III. The Commission

(1) There is hereby created an agency of the party states to be known as the "Vehicle Equipment Safety Commission", hereinafter called the commission. The commission shall be composed of one commissioner from each party state who shall be appointed, serve, and be subject to removal in accordance with the laws of the state which he represents. If authorized by the

laws of his party state, a commissioner may provide for the discharge of his duties and the performance of his functions on the commission, either for the duration of his membership or for any lesser period of time, by an alternate. No such alternate shall be entitled to serve unless notification of his identity and appointment shall have been given to the commission in such form as the commission may require. Each commissioner, and each alternate when serving in the place and stead of a commissioner, shall be entitled to be reimbursed by the commission for expenses actually incurred in attending commission meetings or while engaged in the business of the commission.

(2) The commissioners shall be entitled to one vote each on the commission. No action of the commission shall be binding unless taken at a meeting at which a majority of the total number of votes on the commission are cast in favor thereof. Action of the commission shall be only at a meeting at which a majority of the commissioners, or their alternates, are present.

(3) The commission shall have a seal.

(4) The commission shall elect annually, from among its members, a chairman, a vice-chairman, and a treasurer. The commission may appoint an executive director and fix his duties and compensation. Such executive director shall serve at the pleasure of the commission, and together with the treasurer shall be bonded in such amount as the commission shall determine. The executive director also shall serve as secretary. If there be no executive director, the commission shall elect a secretary in addition to the other officers provided by this subdivision.

(5) Irrespective of the civil service, personnel, or other merit system laws of any of the party states, the executive director with the approval of the commission, or the commission if there be no executive director, shall appoint, remove, or discharge such personnel as may be necessary for the performance of the commission's functions, and shall fix the duties and compensation of such personnel.

(6) The commission may establish and maintain independently or in conjunction with any one or more of the party states a suitable retirement system for its full time employees. Employees of the commission shall be eligible for social security coverage in respect of old age and survivor's insurance provided that the commission takes such steps as may be necessary pursuant to the laws of the United States to participate in such program of insurance as a governmental agency or unit. The commission may establish and maintain or participate in such additional programs of employee benefits as may be appropriate.

(7) The commission may borrow, accept, or contract for the services of personnel from any party state, the United States, or any subdivision or agency of the aforementioned governments, or from any agency of two or more of the party states or their subdivisions.

(8) The commission may accept for any of its purposes and functions under this compact any and all donations and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any other governmental agency and may receive, utilize, and dispose of the same.

(9) The commission may establish and maintain such facilities as may be necessary for the transacting of its business. The commission may acquire, hold, and convey real and personal property and any interest therein.

(10) The commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto with the appropriate agency or officer in each of the party states. The bylaws shall provide for appropriate notice to the commissioners of all commission meetings and hearings and the business to be transacted at such meetings or hearings. Such notice shall also be given to such agencies or officers of each party state as the laws of such party state may provide.

(11) The commission annually shall make to the governor and legislature of each party state a report covering the activities of the commission for the preceding year, and embodying such recommendations as may have been issued by the commission. The commission may make such additional reports as it may deem desirable.

Article IV. Research and Testing

The commission shall have power to:

(1) collect, correlate, analyze, and evaluate information resulting or derivable from research and testing activities in equipment and related fields;

(2) recommend and encourage the undertaking of research and testing in any aspect of equipment or related matters when, in its judgment, appropriate or sufficient research or testing has not been undertaken;

(3) contract for such equipment research and testing as one or more governmental agencies may agree to have contracted for by the commission, provided that such governmental agency or agencies shall make available the funds necessary for such research and testing;

(4) recommend to the party states changes in law or policy with emphasis on uniformity of laws and administrative rules, regulations, or codes which would promote effective governmental action or coordination in the prevention of equipment-related highway accidents or the mitigation of equipment-related highway safety problems.

Article V. Vehicular Equipment

(1) In the interest of vehicular and public safety, the commission may study the need for or desirability of the establishment of or changes in performance requirements or restrictions for any item of equipment. As a result of such study, the commission may publish a report relating to any item or items of equipment, and the issuance of such a report shall be a condition precedent to any proceedings or other action provided or authorized by this article. No less than 60 days after the publication of a report containing the results of such study, the commission upon due notice shall hold a hearing or hearings at such place or places as it may determine.

(2) Following the hearing or hearings provided for in subsection (1) of this article, and with due regard for standards recommended by appropriate professional and technical associations and agencies, the commission may issue rules, regulations, or codes embodying performance requirements or restrictions for any item or items of equipment covered in the report, which in the opinion of the commission will be fair and equitable and effectuate the purposes of this compact.

(3) Each party state obligates itself to give due consideration to any and all rules, regulations, and codes issued by the commission and hereby declares its policy and intent to be the promotion of uniformity in the laws of the several party states relating to equipment.

(4) The commission shall send prompt notice of its action in issuing any rule, regulation, or code pursuant to this article to the appropriate motor vehicle agency of each party state and such notice shall contain the complete text of the rule, regulation, or code.

(5) If the constitution of a party state requires, or if its statutes provide, the approval of the legislature by appropriate resolution or act may be made a condition precedent to the taking effect in such party state of any rule, regulation, or code. In such event, the commissioner of such party state shall submit any commission rule, regulation, or code to the legislature as promptly as may be in lieu of administrative acceptance or rejection thereof by the party state.

(6) Except as otherwise specifically provided in or pursuant to subsections (5) and (7) of this article, the appropriate motor vehicle agency of a party state shall in accordance with its constitution or procedural laws adopt the rule, regulation, or code within 6 months of the sending of the notice and, upon such adoption, the rule, regulation, or code shall have the force and effect of law therein.

(7) The appropriate motor vehicle agency of a party state may decline to adopt a rule, regulation, or code issued by the commission pursuant to this article if such agency specifically finds, after public hearing on due notice, that a variation from the commission's rule, regulation, or code is necessary to the public safety, and incorporates in such finding the reasons upon which it is based. Any such finding shall be subject to review by such procedure for review of administrative determinations as may be applicable pursuant to the laws of the party state. Upon request, the commission shall be furnished with a copy of the transcript of any hearings held pursuant to this subsection.

Article VI. Finance

(1) The commission shall submit to the executive head or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that party state for presentation to the legislature thereof.

(2) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The total amount of appropriations under any such budget shall be apportioned among the party states as follows: one-third in equal shares and the remainder in proportion to the number of motor vehicles registered in each party state. In determining the number of such registrations, the commission may employ such source or sources of information as in its judgment present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the source or sources used in obtaining information concerning vehicular registrations.

(3) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds

available to it under Article III(8) of this compact, provided that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under Article III(8) hereof, the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(4) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its rules. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual reports of the commission.

(5) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

(6) Nothing contained herein shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

Article VII. Conflict of Interest

(1) The commission shall adopt rules and regulations with respect to conflict of interest for the commissioners of the party states, and their alternates, if any, and for the staff of the commission and contractors with the commission to the end that no member or employee or contractor shall have a pecuniary or other incompatible interest in the manufacture, sale, or distribution of motor vehicles or vehicular equipment or in any facility or enterprise employed by the commission or on its behalf for testing, conduct of investigations, or research. In addition to any penalty for violation of such rules and regulations as may be applicable under the laws of the violator's jurisdiction of residence, employment, or business, any violation of a commission rule or regulation adopted pursuant to this article shall require the immediate discharge of any violating employee and the immediate vacating of membership, or relinquishing of status as a member on the commission by any commissioner or alternate. In the case of a contractor, any violation of any such rule or regulation shall make any contract of the violator with the commission subject to cancellation by the commission.

(2) Nothing contained in this article shall be deemed to prevent a contractor for the commission from using any facilities subject to his control in the performance of the contract even though such facilities are not devoted solely to work of or done on behalf of the commission, or to prevent such a contractor from receiving remuneration or profit from the use of such facilities.

Article VIII. Advisory and Technical Committees

The commission may establish such advisory and technical committees as it may deem necessary, membership on which may include private citizens and public officials, and may cooperate with and use the services of any such committees and the organizations which the members represent in furthering any of its activities.

Article IX. Entry Into Force and Withdrawal

(1) This compact shall enter into force when enacted into law by any six or more states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof.

(2) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until 1 year after the executive head of the withdrawing state has given notice in writing of the withdrawal to the executive heads of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

Article X. Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

History: En. Sec. 1, Ch. 109, L. 1965; R.C.M. 1947, 32-21-166.

61-2-202. Legislative findings on equipment safety. The legislature finds that:

(1) the public safety necessitates the continuous development, modernization, and implementation of standards and requirements of law relating to vehicle equipment, in accordance with expert knowledge and opinion;

(2) the public safety further requires that such standards and requirements be uniform from jurisdiction to jurisdiction, except to the extent that specific and compelling evidence supports variation;

(3) the division of motor vehicles, acting upon recommendations of the vehicle equipment safety commission and pursuant to the Vehicle Equipment Safety Compact, provides a just, equitable, and orderly means of promoting the public safety in the manner and within the scope contemplated by this part.

History: En. Sec. 2, Ch. 109, L. 1965; R.C.M. 1947, 32-21-167.

61-2-203. Equipment requirements continued in force. Provisions of chapter 9 of this title shall continue to be in effect. The approval of the legislature is a condition precedent to the taking effect of any rule, regulation, or code that may be adopted by the commission.

History: En. Sec. 3, Ch. 109, L. 1965; R.C.M. 1947, 32-21-168; amd. Sec. 24, Ch. 421, L. 1979.

61-2-204. State commissioner on vehicle equipment safety commission. Notwithstanding section 1, Chapter 272, Laws of 1971, the commissioner of this state on the vehicle equipment safety commission is the highway patrol chief who shall serve during his continuance as such officer.

The commissioner appointed pursuant to this section may designate an alternate from among the officers and employees of his agency to serve in his place on the vehicle equipment safety commission. Subject to the provisions of the compact and bylaws of the vehicle equipment safety commission, the authority and responsibilities of the alternate are as determined by the commissioner designating him.

History: **En. Sec. 4, Ch. 109, L. 1965; R.C.M. 1947, 32-21-169; amd. Sec. 25, Ch. 421, L. 1979.**

61-2-205. Retirement of equipment safety commission employees. The public employees retirement board of Montana may make an agreement with the vehicle equipment safety commission for the coverage of said commission's employees pursuant to Article III(6) of the compact. Any such agreement, as nearly as may be, shall provide for arrangements similar to those available to the employees of this state and shall be subject to amendment or termination in accordance with its terms.

History: **En. Sec. 5, Ch. 109, L. 1965; R.C.M. 1947, 32-21-170.**

61-2-206. Governmental agencies to cooperate with equipment safety commission. Within appropriations available therefor, the departments, agencies, and officers of the government of this state may cooperate with and assist the vehicle equipment safety commission within the scope contemplated by Article III(8) of the compact. The departments, agencies, and officers of the government of this state are authorized generally to cooperate with said commission.

History: **En. Sec. 6, Ch. 109, L. 1965; R.C.M. 1947, 32-21-171.**

61-2-207. Documents filed and notices given by equipment safety commission. Filing of documents as required by Article III(10) of the compact shall be with the division of motor vehicles. Any and all notices required by commission bylaws to be given pursuant to Article III(10) of the compact shall be given to the commissioner of this state and his alternate.

History: **En. Sec. 7, Ch. 109, L. 1965; R.C.M. 1947, 32-21-172.**

61-2-208. Equipment safety commission funds. (1) Pursuant to Article VI(1) of the compact, the vehicle equipment safety commission shall submit its budgets to the state budget director.

(2) Pursuant to Article VI(5) of the compact, the department of administration is hereby empowered and authorized to inspect the accounts of the vehicle equipment safety commission.

History: **En. Secs. 5, 9, Ch. 109, L. 1965; R.C.M. 1947, 32-21-173, 32-21-174; amd. Sec. 7, Ch. 274, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "department of administration" for "department of community affairs" in (2).

Transfer of Function: Section 7, Ch. 274, L. 1981, provided in part: "(1) The functions of the department of community affairs of auditing the accounts and financial transactions of political subdivisions and generally assisting political subdivisions in . . . 61-2-208 . . . are transferred to the department of administration."

61-2-209. Governor as executive head for compact purposes. The term "executive head" as used in Article IX(2) of the compact shall, with reference to this state, mean the governor.

History: **En. Sec. 11, Ch. 109, L. 1965; R.C.M. 1947, 32-21-175.**

Part 3

Driver Improvement Program

61-2-301. Purpose. The toll of accidents, personal injuries, and deaths resulting from the operation of motor vehicles remains a matter of great concern to the legislature. The failure to apply proper driving techniques in the operation of vehicles and improper driving attitudes and habits on the part of operators constitute major factors in a substantial portion of both fatal and nonfatal automobile accidents. Current efforts to improve driver skills, responsibilities, attitudes, and habits have not proved adequate to stem the accident, injury, and death toll. The public interest in the cause of highway safety will be well served by additional methods of driver rehabilitation and improvement and the establishment of programs of rehabilitative instruction, driver improvement, and direction for drivers with poor driving records.

History: En. 31-191 by Sec. 1, Ch. 526, L. 1977; R.C.M. 1947, 31-191.

61-2-302. Establishment of driver improvement program — participation by offending drivers. (1) The department of justice may establish by administrative rules a driver rehabilitation and improvement program or programs which may consist of classroom instruction in rules of the road, driving techniques, defensive driving, driver attitudes and habits, actual on-the-road driver's training, and other such subjects or tasks designed to contribute to proper driving attitudes, habits, and techniques.

(2) Official participation in such driver rehabilitation and improvement program is limited to those persons whose license to operate a motor vehicle in the state of Montana is:

(a) subject to suspension or revocation as a result of a violation of the traffic laws of this state; or

(b) revoked and they have:

(i) completed at least 3 months of a 1-year revocation; or

(ii) completed 1 year of a 3-year revocation; and

(iii) have met the requirements for reobtaining a Montana driver's license.

(3) Notwithstanding any provision of this part inconsistent with any other law of the state of Montana, the enforcement of any suspension or revocation order which constitutes the basis for any person's participation in the driver rehabilitation and improvement program provided for herein may be stayed if that person complies with the requirements established for the driver improvement program and meets the eligibility requirements of subsection (2).

(4) In the event a person's driver's license has been surrendered prior to his selection for participation in the driver rehabilitation and improvement program, the license may be returned upon receipt of his agreement to participate in the program.

(5) The stay of enforcement of any suspension or revocation order shall be terminated and the order of suspension or revocation enforced if a person declines to participate in the driver rehabilitation and improvement program or fails to meet the attendance or other requirements established for participation in the program.

(6) Nothing in this part creates a right to be included in any program established under this part.

(7) The department of justice may establish a schedule of fees which may be charged those persons participating in the driver improvement and rehabilitation program, which fees shall be used to help defray costs of maintaining the program.

(8) A person may be referred to this program by a driver improvement analyst, city judge, justice of the peace, judge of a district court of the state, or a hearing examiner of the department of justice.

History: En. 31-192 by Sec. 2, Ch. 526, L. 1977; R.C.M. 1947, 31-192; amd. Sec. 1, Ch. 297, L. 1979.

CHAPTER 3

CERTIFICATES OF OWNERSHIP, REGISTRATION, AND TAXATION OF MOTOR VEHICLES

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Section

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Part 1

General Provisions

61-3-101. Duties of division of motor vehicles — records. (1) The division of motor vehicles shall keep a record as hereinafter specified of all motor vehicles, trailers, and semitrailers of every kind, and of certificates of registration and ownership thereof, and of all dealers in motor vehicles.

(2) In the case of motor vehicles, trailers, and semitrailers, the record shall show the following:

(a) name of owner, residence by town and county, and business address;

(b) name and address of conditional sales vendor, mortgagee, or other lienholder and amount due under contract or lien;

(c) manufacturer of car;

(d) manufacturer's designation of style of car or vehicle;

(e) identifying number;

(f) year of manufacture;

(g) character of motive power and shipping weight of car as shown by the manufacturer;

(h) the distinctive license number assigned to the vehicle;

(i) if a truck or trailer, the number of tons' capacity or GVW if imprinted on manufacturer's identification plate;

(j) such other information as may from time to time be found desirable.

(3) The division shall file applications for registration received by it from the county treasurers of the state and register the vehicles therein described and the owners thereof in suitable books or on index cards, as follows:

(a) under the distinctive license number assigned to the vehicle by the county treasurer;

(b) alphabetically under the name of the owner;

(c) numerically under make and identifying number of the vehicle;

(d) such other index of registration as the division considers expedient.

(4) Vehicle registration records and indexes and driver's license records and indexes may be maintained by electronic recording and storage media.

(5) In the case of dealers, the records shall show the information contained in the application for dealer's license as required by 61-4-101 through 61-4-105, as well as the distinctive license number assigned to the dealer.

(6) In order to prevent an accumulation of unneeded records and files, the division shall have the authority and it shall be its duty to destroy all records and files which have ceased to be of any value.

(7) The division may establish and maintain a short-wave radio station in order to report motor vehicle registration information to the highway patrol, to sheriffs, and to the chiefs of police of each incorporated city of the state who are able to communicate with such short-wave radio station.

(8) All records shall be open to inspection during all reasonable business hours, and the division shall furnish any information from the records upon payment by the applicant of the cost of transcribing the information requested.

(9) Within 30 days following the end of each calendar quarter, the division shall send to each county assessor and to the department of revenue a list of the certificates of ownership for housetrailers and mobile homes issued during the preceding calendar quarter to owners within each assessor's respective county. The list must contain the name and address of the owner or the names and addresses of joint owners and a description of the housetrailer, including the year built and the serial number.

History: En. Sec. 1, Ch. 75, L. 1917; re-en. Sec. 1755, R.C.M. 1921; amd. Sec. 1, Ch. 177, L. 1925; amd. Sec. 1, Ch. 129, L. 1927; amd. Sec. 1, Ch. 181, L. 1929; amd. Sec. 1, Ch. 159, L. 1933; re-en. Sec. 1755, R.C.M. 1935; amd. Secs. 1, 2, Ch. 62, L. 1943; amd. Sec. 1, Ch. 208, L. 1957; amd. Sec. 22, Ch. 177, L. 1965; amd. Sec. 1, Ch. 256, L. 1965; amd. Sec. 1, Ch. 74, L. 1967; amd. Sec. 1, Ch. 115, L. 1969; amd. Sec. 1, Ch. 207, L. 1969; amd. Sec. 1, Ch. 214, L. 1971; amd. Sec. 7, Ch. 343, L. 1977; R.C.M. 1947, 53-101; amd. Sec. 26, Ch. 421, L. 1979; amd. Sec. 1, Ch. 15, L. 1981.

Compiler's Comments

1981 Amendment: Added subsection (9).

61-3-102. General fund reimbursement. Any moneys appropriated from the general fund for the operation of the division or for the manufacture of number plates shall be reimbursed to the general fund from the motor vehicle account, earmarked revenue fund, if there are moneys in the account above the amount required for the normal operation of the division.

History: En. 53-122.1 by Sec. 3, Ch. 41, L. 1975; R.C.M. 1947, 53-122.1.

61-3-103. Filing of security interests, rights, procedure, fees. (1) No security interest in a motor vehicle shall be valid as against creditors, subsequent purchasers, or encumbrancers unless the security agreement or other lien instrument that creates the security interest or a true copy thereof certified by a notary public has been filed with the division as provided in this section. The division shall not file any security agreement or other lien instrument unless it is accompanied by the certificate of ownership of the vehicle encumbered, except in the sale of a new motor vehicle by a duly licensed dealer. The division shall file the security agreement, lien instrument, or its certified copy by entering upon its records the name and address of the secured party together with the amount of the security interest and, except as provided in subsection (2), shall endorse the same information upon the face of the certificate of ownership. The division shall mail a statement certifying to the filing of a security agreement or lien instrument to the secured party and mail the certificate of ownership to the owner at the address given on the certificate. The owner of a motor vehicle is the person entitled to operate and possess such motor vehicle.

(2) Whenever a security agreement or lien instrument is filed against a motor vehicle that is subject to two security interests previously perfected by filing under this section, the division shall endorse on the face of the certificate of ownership, "NOTICE. This motor vehicle is subject to additional security interests on file with the Division of Motor Vehicles." No other information regarding such additional security interests need be endorsed on the certificate.

(3) Satisfactions or statements of release filed with the division under this chapter shall be retained by it for a period of 8 years after receipt, after which they may be destroyed. Security agreements and other lien instruments filed with the division, and all renewals and assignments thereof, shall be retained by it for a period of 8 years after the maturity date stated in the security agreement, lien instrument, or renewal, or if no maturity date is therein stated, for a period of 13 years after receipt, after which they may be destroyed.

(4) The filing of a security agreement or other lien instrument or copy thereof, as herein provided, perfects a security interest which has attached under the document filed. Filing of a security agreement or other lien instrument constitutes constructive notice to subsequent purchasers or encumbrancers, from the time of filing, of the existence of the security interest created by the document filed.

(5) Upon default under a chattel mortgage or conditional sales contract covering a motor vehicle, the mortgagee or vendor has the same remedies as in the case of other personal property. In case of attachment of motor vehicles all the provisions of 27-18-413, 27-18-414, and 27-18-804 shall be applicable except that deposits must be made with the division.

(6) A conditional sales vendor or chattel mortgagee or assignee who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sales contract within 15 days after receiving final payment shall be required to pay the division the sum of $1 for each day thereafter that he fails to file such satisfaction.

(7) Upon receipt of any liens, or notice of liens dependent on possession, or attachments, etc., against the record of any motor vehicle registered in this state, the division shall within 24 hours mail to the owner, conditional sale vendor, mortgagees, or assignees of any thereof a notice showing the name and address of the lien claimant, amount of the lien, date of execution of lien, and in the case of attachment the full title of the court and the action and the name of the attorneys for the plaintiff and/or attaching creditor.

(8) It shall not be necessary to refile with the division any instruments on file in the offices of the county clerk and recorders at the time this law takes effect.

(9) A fee of $3 shall be paid to the division to file any security agreement or other lien instrument against a motor vehicle. The $3 fee shall include and cover the cost of filing a satisfaction or release of the security interest and also the cost of entering such satisfaction or release on the records of the division and deleting the endorsement of the security interest from the face of the certificate of ownership. A fee of $3 shall be paid the division for issuing a certified copy of a security agreement or other lien instrument on file in the office of the division, or for filing an assignment of any instrument on file with the division. All fees provided for in this section shall be deposited by the division in the motor vehicle recording account of the earmarked revenue fund.

History: En. Subd. 4, Sec. 2, Ch. 159, L. 1933; re-en. Sec. 1758.3, R.C.M. 1935; amd. Sec. 7, Ch. 72, L. 1937; amd. Sec. 3, Ch. 148, L. 1943; amd. Sec. 3, Ch. 63, L. 1945; amd. Sec. 11-143, Ch. 264, L. 1963; amd. Sec. 26, Ch. 121, L. 1965; R.C.M. 1947, 53-110; amd. Sec. 2, Ch. 189, L. 1979; amd. Sec. 1, Ch. 502, L. 1979.

Compiler's Comments

Saving clause. Sec. 6, Ch. 502, L. 1979, provided: "Nothing contained herein shall affect the perfected status of a security interest filed prior to [the effective date of this act]. The division shall endorse information regarding any security interest perfected prior to [the effective date of this act] upon the face of any certificate of ownership in the same manner as any other security interest." The act was effective July 1, 1979.

61-3-104. Parts of motor vehicle subject to security interest. Tires, casings, and/or tubes mounted on a motor vehicle are an integral and component part of said motor vehicle and any tire, casing, and/or tube placed thereon is subject to any conditional sales contract, mortgage, lease, or other lien on said motor vehicle in the order of filing with the division.

History: En. Sec. 4, Ch. 148, L. 1943; R.C.M. 1947, 53-111; amd. Sec. 2, Ch. 502, L. 1979.

61-3-105. Registrant as prima facie owner of vehicle. For the purpose of this title, except as provided by 61-3-701(3) the person appearing on the public records as the registrant of any motor vehicle shall prima facie be deemed the owner thereof.

History: En. Sec. 5, Ch. 166, L. 1929; re-en. Sec. 1746.4, R.C.M. 1935; R.C.M. 1947, 32-1110; amd. Sec. 27, Ch. 421, L. 1979.

61-3-106. Report of stolen and recovered motor vehicles. It shall be the duty of the sheriff of every county of the state and of the chief of police or commissioner of police of every city to make immediate report to the division of all motor vehicles reported to him as stolen or recovered, upon forms provided for by the division. Failure on the part of any officer shall be considered to be misfeasance in office and shall constitute grounds for removal. Upon receipt of such information, the division shall file it in an index to be known as the stolen and recovered motor vehicle index. It shall also be the duty of the division to file reports of stolen and recovered motor vehicles reported to it from other states. The division shall prepare once a month a list of all motor vehicles stolen or recovered during the previous month and forward a copy of it to every sheriff and all police departments in cities of the first, second, and third class. The list shall also be forwarded to the secretary of state or other proper official in each state of the United States. Before issuing a certificate of ownership, the division shall check the motor and serial number on the motor vehicle to be registered against the stolen and recovered vehicle index.

History: En. Sec. 13, Ch. 113, L. 1925; re-en. Sec. 1763.5, R.C.M. 1935; R.C.M. 1947, 53-137; amd. Sec. 28, Ch. 421, L. 1979.

61-3-107. Identification number for trailers. Any trailer, semitrailer, or housetrailer which does not have a manufacturer's or other identifying number thereon shall be assigned an identification number by the division upon registration of such motor vehicle. The owner or other person lawfully in possession of such motor vehicle shall stamp such number so assigned by the division upon the principal right frame member of said motor vehicle near the front end thereof where it may be clearly and readily seen, and said stamping shall be promptly accomplished after notice of the assigned number by the division. The division may withhold registration until satisfactory proof by affidavit of such stamping is filed with it.

History: En. Sec. 4, Ch. 75, L. 1917; re-en. Sec. 1758, R.C.M. 1921; amd. Sec. 2, Ch. 159, L. 1933; re-en. Sec. 1758, R.C.M. 1935; amd. Sec. 5, Ch. 72, L. 1937; amd. Sec. 1, Ch. 148, L. 1943; amd. Sec. 1, Ch. 63, L. 1945; amd. Sec. 1, Ch. 115, L. 1953; amd. Sec. 1, Ch. 200, L. 1955; amd. Sec. 1, Ch. 139, L. 1961; amd. Sec. 7, Ch. 127, L. 1969; amd. Sec. 1, Ch. 179, L. 1971; amd. Sec. 1, Ch. 104, L. 1975; R.C.M. 1947, 53-107(part).

61-3-108. Disposition of fees — use. (1) All fees payable to the division shall be deposited in a motor vehicle recording account of the earmarked revenue fund.

(2) Funds deposited in the motor vehicle recording account of the earmarked revenue fund may be expended for the following purposes:

(a) to pay the salaries and operating expenses of the division, including the manufacture and delivery of license plates;

(b) to fund the forensic science division of the department of justice;

(c) to fund the Montana law enforcement academy bureau;

(d) to fund the law enforcement teletype system bureau of the department of justice;

(e) to fund the Montana criminal law information center to the extent that all of the above programs have been previously funded and funds remain available.

(3) Any fund balance remaining in the motor vehicle recording account at the end of a biennium that has not been appropriated for that biennium must be transferred to the general fund.

History: En. Sec. 34, Ch. 421, L. 1979; En. Sec. 3, Ch. 654, L. 1979.

Compiler's Comments

Composite section. This section was amended by Ch. 421 and Ch. 654, L. 1979, and a composite section was prepared by the Code Commissioner, 1979. Ch. 421 was a Code Commissioner bill and was not intended to make substantive changes in the law. Consequently, the language usage of Ch. 654 was chosen.

Part 2

Certificates of Ownership

61-3-201. Transfer of interest. (1) Upon a transfer of any interest in a motor vehicle registered under the provisions of this chapter, the person whose interest is to be transferred shall write his signature with pen and ink upon the certificate of ownership issued for such vehicle in the appropriate space provided upon the reverse side of the certificate, and his signature shall be acknowledged before a notary public.

(2) Within 20 calendar days thereafter, the transferee shall forward both the endorsed certificate of ownership and the certificate of registration, together with the information required under 61-3-202, to the county treasurer, who shall forward them to the division. No certificate of ownership or certificate of registration may be issued by the division until the outstanding certificates are surrendered to that office or their loss is established to its reasonable satisfaction. Failure to make application within the 20-day grace period subjects the transferee to a penalty of $10. The penalty is to be collected by the county treasurer at the time of registration and is in addition to the fees otherwise provided by law.

(3) In the event of a transfer by operation of law of any interest in a motor vehicle as upon inheritance, devise, or bequest, order in bankruptcy or insolvency, execution sale, repossession upon default in the performance of the terms of a lease or executory sales contract, or otherwise than by voluntary act of the person whose title or interest is transferred, the executor, administrator, receiver, trustee, sheriff, or other representative or successor in interest of the person whose interest is transferred shall forward to the division an application for a certificate of ownership in the form required for an original application for a certificate of ownership, together with a verified or certified statement of the transfer of such interest. The statement shall set forth the reason for the involuntary transfer, the interest so transferred, the name of the person to whom the interest is to be transferred, the process of procedure effecting such transfer, and other information requested by the division. Evidence and instruments otherwise required by law to effect a transfer of legal or equitable title to or an interest in chattels as may be required in such cases shall be furnished with the statement. If the division is satisfied that the transfer is regular and that all formalities required by law have been complied with, it shall send to the owner, conditional sales vendor, lessor, mortgagee, and other lienor, as shown by its records, notice of the intended transfer and thereafter, but not less than 5 days thereafter, shall issue a new certificate of ownership and certificate of registration to the

person entitled thereto. The notice herein required is complied with by deposit in the post office in Deer Lodge, Montana, such notice, postage prepaid, addressed to the person at the respective address shown on its records.

(4) When the vehicle certificate of ownership that is involuntarily transferred is not registered in this state, the procedure set forth above must be followed in applying for a new certificate of ownership and certificate of registration but the division need not send notice of intended transfer and shall issue a new certificate of ownership and a new certificate of registration to the person entitled thereto.

(5) (a) In the event of the death of the owner of one or more motor vehicles, trailers, semitrailers, or housetrailers registered hereunder and not exceeding a combined value of $15,000 without leaving other property necessitating the procuring of letters of administration or letters testamentary, then the surviving spouse or other heir unless such property is by will otherwise bequeathed may secure transfer of the decedent's certificate of ownership and the certificate of registration for the vehicle.

(b) The person seeking transfer of the certificate of ownership shall file an affidavit with the division setting forth the fact of survivorship and the name and address of any other heirs and such other facts as are hereby made necessary to entitle the affiant to a transfer.

(c) The division is authorized to transfer the certificate of ownership and certificate of registration, subject to all security interests shown by its records, upon receipt of an affidavit showing that the affiant is entitled to a transfer under the provisions of subsection (5)(a) of this section.

(6) Nothing in subsection (5) shall prevent any secured party from assigning his interest in a motor vehicle registered under the provisions of this chapter to any other person without the consent of and without affecting the interest of the holder of the certificate of ownership and certificate of registration. Upon any assignment by a secured party of his security interest in any motor vehicle registered under this chapter, a copy of such assignment must be filed with the division and record thereof made upon its records.

(7) The certificates of ownership shall remain valid until canceled by the division upon a transfer of any interest shown therein and need not be renewed annually.

History: (1) thru (6)En. Subd. 3, Sec. 2, Ch. 159, L. 1933; re-en. Sec. 1758.2, R.C.M. 1935; amd. Sec. 6, Ch. 72, L. 1937; amd. Sec. 2, Ch. 148, L. 1943; amd. Sec. 2, Ch. 63, L. 1945; amd. Sec. 1, Ch. 191, L. 1967; amd. Sec. 1, Ch. 213, L. 1969; amd. Sec. 2, Ch. 138, L. 1971; amd. Sec. 1, Ch. 399, L. 1977; Sec. 53-109, R.C.M. 1947; (7)En. Subd. 2, Sec. 2, Ch. 159, L. 1933; re-en. Sec. 1758.1, R.C.M. 1935; amd. Sec. 1, Ch. 244, L. 1955; amd. Sec. 1, Ch. 146, L. 1957; amd. Sec. 1, Ch. 100, L. 1959; amd. Sec. 25, Ch. 121, L. 1965; amd. Sec. 1, Ch. 116, L. 1969; amd. Sec. 8, Ch. 127, L. 1969; amd. Sec. 1, Ch. 138, L. 1971; amd. Sec. 2, Ch. 214, L. 1971; amd. Sec. 11, Ch. 74, L. 1975; Sec. 53-108, R.C.M. 1947; R.C.M. 1947, 53-108(part), 53-109; amd. Sec. 1, Ch. 203, L. 1979; amd. Sec. 29, Ch. 421, L. 1979.

61-3-202. Certificate of ownership — issuance — contents — joint ownership. (1) Upon completion of the application for certificate of ownership, on forms furnished by the division, the county treasurer shall forward one copy of the application to the division, which shall enter the information contained in the application upon the corresponding records of its office and shall furnish the applicant a certificate of ownership subject to the provisions of 61-3-103.

(2) The certificate of ownership shall contain upon the face thereof:
(a) the date issued;
(b) the name and complete address of the owner or the names and addresses of joint owners;
(c) except as provided in 61-3-103(2), the name and complete address of any holder of a perfected security interest in the registered vehicle;
(d) a description of the registered vehicle, including the year built and serial number;
(e) except as provided in 61-3-103(2), the filing date of any lien against such motor vehicle; and
(f) such other statement of facts as may be determined by the division.

(3) When the names and addresses of more than one owner who are members of the same immediate family are listed on the certificate of ownership, joint ownership with right of survivorship, and not as tenants in common, is presumed.

(4) Upon receipt of the application, the division shall recheck the application. If there is any error in the application it may be returned to the county treasurer to effectively secure the correction of such error, who shall return the same to the division.

(5) The certificate of ownership shall contain a notice to the division of a transfer of interest of the owner and such other statements as may be determined by the division.

History: En. Sec. 4, Ch. 75, L. 1917; re-en. Sec. 1758, R.C.M. 1921; amd. Sec. 2, Ch. 159, L. 1933; re-en. Sec. 1758, R.C.M. 1935; amd. Sec. 5, Ch. 72, L. 1937; amd. Sec. 1, Ch. 148, L. 1943; amd. Sec. 1, Ch. 63, L. 1945; amd. Sec. 1, Ch. 115, L. 1953; amd. Sec. 1, Ch. 200, L. 1955; amd. Sec. 1, Ch. 139, L. 1961; amd. Sec. 7, Ch. 127, L. 1969; amd. Sec. 1, Ch. 179, L. 1971; amd. Sec. 1, Ch. 104, L. 1975; R.C.M. 1947, 53-107(part); amd. Sec. 30, Ch. 421, L. 1979; amd. Sec. 3, Ch. 502, L. 1979.

61-3-203. Fee for original certificate of ownership and transfer of title — disposition. A charge of $3 shall be made for issuance of an original certificate of ownership of title and for a transfer of registration which shall be collected by the county treasurer. The fees shall be distributed as follows:

(1) Two dollars of each fee shall be remitted to the division by the county treasurer with each application for original certificate of ownership or transfer of registration.

(2) Prior to March 1, 1966 and each March thereafter, the county commissioners of each county shall divide the fees retained by the county to:
(a) the city road fund of each city and town within the county based on the number of motor vehicles registered inside the corporate limits of each city or town; and
(b) the county road fund based on the number of motor vehicles registered outside the corporate limits of cities and towns.

History: En. Subd. 5, Sec. 2, Ch. 159, L. 1933; re-en. Sec. 1758.4, R.C.M. 1935; amd. Sec. 8, Ch. 72, L. 1937; amd. Sec. 27, Ch. 121, L. 1965; amd. Sec. 2, Ch. 41, L. 1975; R.C.M. 1947, 53-112.

61-3-204. Lost certificates. In the event any certificate of ownership is lost, mutilated, or becomes illegible, the owner shall immediately make application for and obtain a duplicate thereof, upon furnishing satisfactory evidence of such facts and upon payment of a fee of $2. Revenue from this fee shall be deposited in the motor vehicle recording account of the earmarked revenue fund.

History: En. Subd. 6, Sec. 2, Ch. 159, L. 1933; re-en. Sec. 1758.5, R.C.M. 1935; amd. Sec. 1, Ch. 96, L. 1953; amd. Sec. 28, Ch. 121, L. 1965; R.C.M. 1947, 53-113(part); amd. Sec. 1, Ch. 654, L. 1979.

61-3-205. Transfer of ownership of vehicles by insurance company. (1) When an insurance company or its adjuster has taken possession of a motor vehicle as a result of settling an insurance claim and transfers ownership of the motor vehicle, it shall deliver to the transferee at the time of transfer a signed and notarized certificate of ownership.

(2) If the certificate of ownership names one or more holders of a perfected security interest in the motor vehicle, the insurance company or its adjuster shall also secure and deliver to the transferee a release from the secured party of the security interest.

History: En. Sec. 1, Ch. 12, L. 1981.

Compiler's Comments

1981 Title: The title to Ch. 12, L. 1981 (SB 157), read: "An act to provide for transfer of ownership of motor vehicles by insurance companies after settlement of insurance claims."

Codification Instruction: Section 2, Ch. 12, L. 1981, provided: "Section 1 [now 61-3-205] is intended to be codified as an integral part of Title 33, and the provisions of Title 33 apply to section 1." The Code Commissioner, however, determined that the section more logically belongs in Title 61.

Part 3

Registration

61-3-301. Registration — license plate required — display. (1) Except as otherwise provided herein, no person shall operate a motor vehicle upon the public highways of this state unless such vehicle is properly registered and has the proper number plates conspicuously displayed, one on the front and one on the rear of the vehicle, each securely fastened to prevent it from swinging and unobstructed from plain view, except that trailers, semitrailers, and motorcycles shall have but one number plate conspicuously displayed on the rear. No person shall display on such vehicle at the same time any number assigned to it under any motor vehicle law except as provided in this chapter. A junk vehicle, as defined in part 5, chapter 10, Title 75, being driven or towed to an auto wrecking graveyard for disposal is exempt from the provisions of this section.

(2) No person shall purchase or display on a vehicle any license plate bearing the number assigned to any county as provided in 61-3-332 other than the county of his permanent residence at the time of application for registration. However, the owner of any motor vehicle requiring a license plate on any motor vehicle used in the public transportation of persons or property may make application therefor in any county through which the motor vehicle passes in its regularly scheduled route, and the license plate so issued bearing the number assigned to said county may be displayed on the motor vehicle in any other county of the state.

(3) It is unlawful to use license plates issued to one vehicle on any other vehicle, trailer, or semitrailer unless legally transferred as provided by statute, or to repaint old license plates to resemble current license plates.

(4) Any person violating these provisions is guilty of a misdemeanor and subject to the penalty set out in 61-3-601.

History: En. Subd. 6, Sec. 1, Ch. 158, L. 1933; re-en. Sec. 1759.5, R.C.M. 1935; amd. Sec. 1, Ch. 154, L. 1937; amd. Sec. 1, Ch. 73, L. 1941; amd. Sec. 10, Ch. 127, L. 1969; amd. Sec. 1, Ch. 18, L. 1974; R.C.M. 1947, 53-119; amd. Sec. 31, Ch. 421, L. 1979.

61-3-302. Residents operating motor vehicles under licenses issued by any state other than Montana forbidden. It shall especially be provided that a resident of the state of Montana shall not operate a motor vehicle under a license issued by any other state than Montana.

History: En. Subd. 8, Sec. 1, Ch. 158, L. 1933; re-en. Sec. 1759.6, R.C.M. 1935; amd. Sec. 2, Ch. 195, L. 1953; amd. Sec. 1, Ch. 247, L. 1957; R.C.M. 1947, 53-121.

61-3-303. Application for registration. (1) Every owner of a motor vehicle operated or driven upon the public highways of this state shall for each motor vehicle owned, except as herein otherwise expressly provided, file or cause to be filed in the office of the county treasurer where the motor vehicle is owned or taxable an application for registration or reregistration upon a blank form to be prepared and furnished by the division. The application shall contain:

(a) name and address of owner, giving county, school district, and town or city within whose corporate limits the motor vehicle is taxable, if taxable, or within whose corporate limits the owner's residence is located if the motor vehicle is not taxable;

(b) name and address of the holder of any security interest in the motor vehicle;

(c) description of motor vehicle, including make, year model, engine or serial number, manufacturer's model or letter, gross weight, type of body, and if truck, the rated capacity;

(d) in case of reregistration, the license number for the preceding year; and

(e) such other information as the division may require.

(2) A person who files an application for registration or reregistration of a motor vehicle, except of a mobile home as defined in 15-1-101(1), shall upon the filing of the application pay to the county treasurer:

(a) the registration fee, as provided in 61-3-311 and 61-3-321; and

(b) unless it has been previously paid:

(i) the personal property taxes assessed;

(ii) the new motor vehicle sales tax against the vehicle for the current year of registration and/or the license fee imposed by 61-3-532; or

(iii) in the case of a motor home, travel trailer, or camper, the fee in lieu of property tax for the current year of registration.

(3) The application may not be accepted by the county treasurer unless the payments required by subsection (2) accompany the application.

(4) The county treasurer may make full and complete investigation of the tax status of the vehicle. Any applicant for registration or reregistration must

submit proof from the tax or other appropriate records of the proper county at the request of the county treasurer.

History: En. Sec. 5, Ch. 75, L. 1917; amd. Sec. 1, Ch. 207, L. 1919; re-en. Sec. 1759, R.C.M. 1921; amd. Sec. 22, Ch. 113, L. 1925; amd. Sec. 2, Ch. 181, L. 1929; amd. Sec. 1, Ch. 158, L. 1931; amd. Sec. 1, Ch. 158, L. 1933; re-en. Sec. 1759, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1937; amd. Sec. 1, Ch. 195, L. 1953; amd. Sec. 1, Ch. 256, L. 1955; amd. Sec. 1, Ch. 223, L. 1957; amd. Sec. 1, Ch. 245, L. 1963; amd. Sec. 1, Ch. 290, L. 1967; amd. Sec. 9, Ch. 296, L. 1967; amd. Sec. 3, Ch. 214, L. 1971; amd. Sec. 12, Ch. 74, L. 1975; amd. Sec. 1, Ch. 55, L. 1977; amd. Sec. 1, Ch. 521, L. 1977; amd. Sec. 43, Ch. 566, L. 1977; R.C.M. 1947, 53-114(1), (3); amd. Sec. 4, Ch. 502, L. 1979; amd. Sec. 7, Ch. 712, L. 1979; amd. Sec. 23, Ch. 614, L. 1981.

Compiler's Comments

1981 Amendment: Added "if taxable, or within whose corporate limits the owner's residence is located if the motor vehicle is not taxable" at the end of (1)(a); added subsection (2)(b); added "and/or the license fee imposed by 61-3-532" at the end of (2)(b)(ii); deleted "unless the same shall have been theretofore paid for the year, before the application for registration or reregistration may be accepted by the county treasurer" from the end of (2)(b)(iii); added subsection (3); and inserted "or other appropriate" before "records" near the end of (4).

Effective Date: Section 66, Ch. 614, L. 1981, provided: "(1) Except as provided in subsection (2), this act is effective on January 1, 1982.

(2) Section 5 [61-3-535] is effective on passage and approval." Approved May 7, 1981.

61-3-304. Previous registration receipt to accompany application for registration. The treasurer of any county shall not accept any application for registration or reregistration of any motor vehicle unless such application be accompanied by the immediately previous registration receipt issued by the division or an affidavit upon a form prescribed by the division stating under oath that the vehicle had not been operated on the highways of the state during the immediately previous year, except in cases of automobiles not previously licensed in Montana. No application for registration or reregistration of any motor vehicle hereafter need be verified.

History: En. Sec. 4, Ch. 158, L. 1931; amd. Sec. 5, Ch. 158, L. 1933; amd. Sec. 1, Ch. 13, Ex. L. 1933; re-en. Sec. 1755.2, R.C.M. 1935; amd. Sec. 1, Ch. 88, L. 1943; R.C.M. 1947, 53-103.

61-3-305. Blanks to be provided. It shall be the duty of the division to provide blank application forms outlining and providing for the information needed in each class of registration required, and to furnish these upon request to applicant for registration.

History: En. Sec. 2, Ch. 75, L. 1917; re-en. Sec. 1756, R.C.M. 1921; re-en. Sec. 1756, R.C.M. 1935; amd. Sec. 2, Ch. 88, L. 1943; R.C.M. 1947, 53-105.

61-3-306 through 61-3-310 reserved.

61-3-311. Time for making application. Registration must be renewed annually and license fees paid annually. Except as provided in 61-3-313 through 61-3-316, all registrations expire on December 31 of the year in which they are issued and application for registration, or reregistration, must be filed with the county treasurer as aforesaid not later than February 15 of each year; provided, however, that in the event of transfer of a motor vehicle during the registration year, such motor vehicle shall be reregistered and relicensed as provided by statute.

History: En. Subd. 2, Sec. 1, Ch. 158, L. 1933; re-en. Sec. 1759.1, R.C.M. 1935; amd. Sec. 1, Ch. 51, L. 1967; amd. Sec. 9, Ch. 127, L. 1969; amd. Sec. 13, Ch. 74, L. 1975; R.C.M. 1947, 53-115.

61-3-312. Renewal of registration. (1) Except as provided in 61-3-314, every vehicle registration under this chapter shall expire on December 31 of each year and shall be renewed annually upon application and payment of license fees as provided in 61-3-303 and 61-3-321, such renewal to take effect on January 1 of each year. The certificate of registration issued hereunder shall be valid during the registration year only for which issued.

(2) The owner of a vehicle registered under the provisions of this section shall be entitled to operate such vehicle between January 1 and February 15 without displaying the registration certificate of the current year, on condition that such owner shall, during said period, display upon such vehicle the number plates or plate assigned thereto for the previous year.

History: En. Subd. 2, Sec. 2, Ch. 159, L. 1933; re-en. Sec. 1758.1, R.C.M. 1935; amd. Sec. 1, Ch. 244, L. 1955; amd. Sec. 1, Ch. 146, L. 1957; amd. Sec. 1, Ch. 100, L. 1959; amd. Sec. 25, Ch. 121, L. 1965; amd. Sec. 1, Ch. 116, L. 1969; amd. Sec. 8, Ch. 127, L. 1969; amd. Sec. 1, Ch. 138, L. 1971; amd. Sec. 2, Ch. 214, L. 1971; amd. Sec. 11, Ch. 74, L. 1975; R.C.M. 1947, 53-108(part).

61-3-313. Vehicles subject to staggered registration. For purposes of 61-3-313 through 61-3-316 "vehicle" means any motor vehicle as defined in 61-1-102(7) subject to annual registration in this state except:

(1) vehicles owned or leased and operated by the government of the United States, of the state of Montana, or its political subdivisions;

(2) mobile homes and motor homes;

(3) vehicles that are registered in accordance with or subject to 10-2-301, 61-3-411, or 61-3-421;

(4) trucks exceeding a licensed gross vehicle weight of 10,000 pounds;

(5) trailers, semitrailers, tractors, buses, motorcycles, and cycle motors;

(6) special mobile equipment as defined in 61-1-104(2).

History: En. 53-154 by Sec. 1, Ch. 74, L. 1975; R.C.M. 1947, 53-154; amd. Sec. 1, Ch. 82, L. 1979.

61-3-314. Registration period. (1) Notwithstanding any other provisions of this title regarding the registration of motor vehicles, commencing January 1, 1976, all vehicles subject to the provisions of 61-3-313 through 61-3-316 shall be registered for 12-month periods based upon the time they are first registered in this state pursuant to 61-3-313 through 61-3-316.

(2) There shall be ten registration periods, each of which shall commence on the first day of a calendar month. The periods are designated as follows:

(a) January 1 through January 31	1st period
(b) February 1 through February 28/29	2nd period
(c) March 1 through March 31	3rd period
(d) April 1 through April 30	4th period
(e) May 1 through May 31	5th period
(f) June 1 through June 30	6th period
(g) July 1 through July 31	7th period
(h) August 1 through August 31	8th period
(i) September 1 through September 30	9th period
(j) October 1 through October 31	10th period

(3) For purposes of 61-3-313 through 61-3-316, the period November 1 through November 30 shall be considered the 10th period preceding and the period December 1 through December 31 shall be considered the first period of the year following.

History: En. 53-155, 53-156 by Secs. 2, 3, Ch. 74, L. 1975; R.C.M. 1947; 53-155, 53-156.

61-3-315. Reregistration on anniversary date — division to make rules. A vehicle that has once been registered for any of the above-designated periods shall thereafter be reregistered for a like period on or before the anniversary date of the initial registration unless that period be changed as provided in this section. The anniversary date for reregistration shall be the 25th day of the month for the designated registration period. The division shall adopt rules for the implementation and administration of 61-3-313 through 61-3-316 and for the identification of the registration on the vehicles. The division shall provide for simultaneous registration of multiple vehicles which have common ownership. The rules shall provide for a change of the registration period to coincide with the date an owner desires to register his vehicles.

History: En. 53-157 by Sec. 4, Ch. 74, L. 1975; amd. Sec. 1, Ch. 183, L. 1977; R.C.M. 1947, 53-157.

61-3-316. New registrations under staggered registration. Vehicles which are registered for the first time in this state shall be assigned a registration period corresponding to when they are first registered in this state. The registration period for a vehicle shall thereafter remain the same from year to year.

History: En. 53-158 by Sec. 5, Ch. 74, L. 1975; R.C.M. 1947, 53-158(part).

61-3-317. New registration required for transferred vehicle — grace period — penalty — display of proof of purchase. Except as otherwise provided herein, the new owner of a transferred motor vehicle shall have a grace period of 20 calendar days from the date of purchase to make application and pay the taxes, or fees, or both provided by part 5 of this chapter, unless the tax or fee has been paid for the year, as if the vehicle were being registered for the first time in that registration year. If the motor vehicle was not purchased from a duly licensed motor vehicle dealer as provided in this chapter, it is not a violation of this chapter or any other law for the purchaser to operate the vehicle upon the streets and highways of this state without a certificate of registration during the 20-day period, provided that at all times during that period a bill of sale or other proof of purchase reciting the date of purchase is clearly displayed in the rear window of the motor vehicle. Registration and license fees collected under 61-3-321 are not required to be paid when a license plate is transferred under this section and 61-3-335. Failure to make application within the time provided herein subjects the purchaser to a penalty of $10. The penalty shall be collected by the county treasurer at the time of registration and shall be in addition to the fees otherwise provided by law.

History: En. Sec. 3, Ch. 127, L. 1969; amd. Sec. 7, Ch. 138, L. 1971; amd. Sec. 1, Ch. 187, L. 1974; amd. Sec. 4, Ch. 243, L. 1977; amd. Sec. 4, Ch. 399, L. 1977; R.C.M. 1947, 53-147; amd. Sec. 32, Ch. 421, L. 1979; amd. Sec. 8, Ch. 712, L. 1979; amd. Sec. 24, Ch. 614, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "pay the taxes, or fees, or both provided by part 5 of this chapter" for "pay the taxes, as provided by part 5 of this chapter or the fee in lieu of tax as provided by 61-3-521" in the middle of the first sentence.

Effective Date: Section 66, Ch. 614, L. 1981, provided: "(1) Except as provided in subsection (2), this act is effective on January 1, 1982.

(2) Section 5 [61-3-535] is effective on passage and approval." Approved May 7, 1981.

61-3-318 through 61-3-320 reserved.

61-3-321. Registration fees of vehicles — public-owned vehicles exempt from license or registration fees — disposition of fees. (1) Registration or license fees shall be paid upon registration or reregistration of motor vehicles, trailers, housetrailers, and semitrailers, in accordance with this chapter, as follows:

(a) motor vehicles weighing 2,850 pounds or under (other than motortrucks), $5;

(b) motor vehicles weighing over 2,850 pounds (other than motortrucks), $10;

(c) electrically driven passenger vehicles, $10;

(d) all motorcycles, $2;

(e) tractors and/or trucks, $10;

(f) buses shall be classed as motortrucks and licensed accordingly;

(g) trailers and semitrailers less than 2,500 pounds maximum gross loaded weight and housetrailers of all weights, $2;

(h) trailers and semitrailers over 2,500 up to 6,000 pounds maximum gross loaded weight (except housetrailers), $5;

(i) trailers and semitrailers over 6,000 pounds maximum gross loaded weight, $10;

(j) trailers used exclusively in the transportation of logs in the forest or in the transportation of oil and gas well machinery, road machinery, or bridge materials, new and secondhand, shall pay a fee of $15 annually, regardless of size or capacity.

(2) All rates shall be 25% higher for motor vehicles, trailers, and semitrailers not equipped with pneumatic tires.

(3) "Tractor", as specified in this section, means any motor vehicle except passenger cars used for towing a trailer or semitrailer.

(4) If any motor vehicle, housetrailer, trailer, or semitrailer is originally registered 6 months after the time of registration as set by law, the registration or license fee for the remainder of the year shall be one-half of the regular fee.

(5) An additional fee of $2 per year for each registration of a vehicle shall be collected as a registration fee. Revenue from this fee shall be forwarded by the respective county treasurers to the state treasurer for deposit in the motor vehicle recording account of the earmarked revenue fund.

(6) The provisions of this part with respect to the payment of registration fees shall not apply to or be binding upon motor vehicles, trailers or semitrailers, or tractors owned or controlled by the United States of America or any state, county, or city.

(7) The provisions of this section relating to the payment of registration fees do not apply when number plates are transferred to a replacement vehicle under 61-3-317(1), 61-3-332(7), or 61-3-335.

History: (1) thru (4), (6), (7)En. Sec. 6, Ch. 75, L. 1917; amd. Sec. 2, Ch. 207, L. 1919; amd. Sec. 1, Ch. 199, L. 1921; re-en. Sec. 1760, R.C.M. 1921; amd. Sec. 1, Ch. 107, L. 1923; amd. Sec. 1, Ch. 88, L. 1927; amd. Sec. 1, Ch. 182, L. 1929; amd. Sec. 1, Ch. 103, L. 1933; amd. Sec. 1, Ch. 38, Ex. L. 1933; re-en. Sec. 1760, R.C.M. 1935; amd. Sec. 1, Ch. 138, L. 1937; amd. Sec. 1, Ch. 125, L. 1939; amd. Sec. 2, Ch. 154, L. 1943; amd. Sec. 2, Ch. 200, L. 1945; amd. Sec. 1, Ch. 201, L. 1945; amd. Sec. 1, Ch. 221, L. 1951; amd. Sec. 1, Ch. 215, L. 1953; amd. Sec. 1, Ch. 41, L. 1955; amd. Sec. 228, Ch. 147, L. 1963; amd. Sec. 1, Ch. 178, L. 1963; amd. Sec. 30, Ch. 121, L. 1965; amd. Sec.

12-105, Ch. 197, L. 1965; amd. Sec. 4, Ch. 226, L. 1971; amd. Sec. 2, Ch. 243, L. 1977; Sec. 53-122, R.C.M. 1947; (5)En. Sec. 3, Ch. 75, L. 1917; re-en. Sec. 1757, R.C.M. 1921; amd. Sec. 2, Ch. 158, L. 1933; re-en. Sec. 1757, R.C.M. 1935; amd. Sec. 1, Ch. 6, L. 1941; amd. Sec. 3, Ch. 88, L. 1943; amd. Sec. 1, Ch. 111, L. 1951; amd. Sec. 1, Ch. 29, L. 1953; amd. Sec. 1, Ch. 245, L. 1955; amd. Sec. 1, Ch. 236, L. 1957; amd. Sec. 1, Ch. 245, L. 1959; amd. Sec. 1, Ch. 245, L. 1965; amd. Sec. 1, Ch. 41, L. 1967; amd. Sec. 5, Ch. 127, L. 1969; amd. Sec. 1, Ch. 226, L. 1971; amd. Sec. 1, Ch. 41, L. 1975; amd. Sec. 1, Ch. 390, L. 1975; amd. Sec. 1, Ch. 243, L. 1977; amd. Sec. 3, Ch. 492, L. 1977; Sec. 53-106, R.C.M. 1947; R.C.M. 1947, 53-106(part), 53-122(part); amd. Sec. 33, Ch. 421, L. 1979; amd. Sec. 7, Ch. 508, L. 1979; amd. Sec. 2, Ch. 654, L. 1979.

61-3-322. Certificates of registration — issuance. (1) Upon completion of the application for registration on forms furnished by the division, the county treasurer shall file one copy in his office and issue to the applicant two copies of the application marked "Owner's Certificate of Registration and Payment Receipt", one of which shall be marked "file copy".

(2) The certificate of registration shall contain upon the face thereof the information described in 61-3-202(2).

(3) Every owner, upon receiving a registration receipt, shall write his signature thereon with pen and ink in the space provided. Every registration receipt or a notarized photostatic copy or a duplicate thereof furnished by the division shall at all times be carried in the vehicle to which it refers or shall be carried by the person driving or in control of such vehicle, who shall display it upon demand of a police officer or any officer or employee of the division or the highway department.

(4) The county treasurer shall daily forward to the division one copy of all applications for registration received that day.

(5) It shall not be necessary for the county treasurer to segregate the amount of taxes or fees for state, county, school district, and municipal purposes in the receipt.

History: (1) thru (3)En. Sec. 4, Ch. 75, L. 1917; re-en. Sec. 1758, R.C.M. 1921; amd. Sec. 2, Ch. 159, L. 1933; re-en. Sec. 1758, R.C.M. 1935; amd. Sec. 5, Ch. 72, L. 1937; amd. Sec. 1, Ch. 148, L. 1943; amd. Sec. 1, Ch. 63, L. 1945; amd. Sec. 1, Ch. 115, L. 1953; amd. Sec. 1, Ch. 200, L. 1955; amd. Sec. 1, Ch. 139, L. 1961; amd. Sec. 7, Ch. 127, L. 1969; amd. Sec. 1, Ch. 179, L. 1971; amd. Sec. 1, Ch. 104, L. 1975; Sec. 53-107, R.C.M. 1947; (4), (5)En. Subd. 3, Sec. 1, Ch. 158, L. 1933; re-en. Sec. 1759.2, R.C.M. 1935; amd. Sec. 3, Ch. 72, L. 1937; amd. Sec. 1, Ch. 199, L. 1955; Sec. 53-116, R.C.M. 1947; R.C.M. 1947, 53-107(part), 53-116(part); amd. Sec. 35, Ch. 421, L. 1979; amd. Sec. 5, Ch. 502, L. 1979; amd. Sec. 9, Ch. 712, L. 1979; amd. Sec. 25, Ch. 614, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "Owner's Certificate of Registration and Payment Receipt" for "Owner's Certificate of Registration and Tax Receipt" near the end of (1); and inserted "or fees" after "the amount of taxes" in (5).

Effective Date: Section 66, Ch. 614, L. 1981, provided: "(1) Except as provided in subsection (2), this act is effective on January 1, 1982.

(2) Section 5 [61-3-535] is effective on passage and approval." Approved May 7, 1981.

61-3-323 through 61-3-330 reserved.

61-3-331. Assignment of number plates. The county treasurer shall, at the time of issuing a registration receipt under 61-3-322, assign such motor vehicle a distinctive number, viz., the license plate number, and deliver to the applicant two license plates, as received from the division, which shall bear such distinctive numbers. The division shall ship said license plates to the various county treasurers by freight, so that they will be received by the county treasurer on or before January 1 of each year.

History: En. Subd. 3, Sec. 1, Ch. 158, L. 1933; re-en. Sec. 1759.2, R.C.M. 1935; amd. Sec. 3, Ch. 72, L. 1937; amd. Sec. 1, Ch. 199, L. 1955; R.C.M. 1947, 53-116(part).

61-3-332. Number plates. (1) Every motor vehicle which shall be driven upon the streets or highways of this state shall display both front and rear a number plate, bearing the distinctive number assigned such vehicle. Such number plate shall be in eight series: one series for owners of motorcars, one for owners of motor vehicles of the motorcycle type, one for trailers, one for trucks, one for dealers in vehicles of the motorcycle type which shall bear the distinctive letters "MCD" or the letters "MC" and the word "DEALER", one for franchised dealers in new motorcars (including trucks and trailers) or new and used motorcars (including trucks and trailers) which shall bear the distinctive letter "D" or the word "DEALER", one for dealers in used motorcars only (including used trucks and trailers) which shall bear the distinctive letters "UD" or the letter "U" and the word "DEALER", and one for dealers in trailers and/or semitrailers (new or used) which shall bear the distinctive letters "DTR" or the letters "TR" and the word "DEALER". All such markings for the aforementioned kinds of dealers' plates shall be placed on the number plates assigned thereto in such position thereon as the division may designate.

(2) All number plates for motor vehicles shall be issued for a minimum period of 4 years, shall bear a distinctive marking, and shall be furnished by the state. In years when number plates are not issued, the division shall provide nonremovable stickers bearing appropriate registration numbers which shall be affixed to the license plates in use.

(3) In the case of motorcars and trucks, number plates shall be of metal 6 inches wide and 12 inches in length. For number plates issued after 1976, the outline of the state of Montana shall be used as a distinctive border on such license plates, and the word "Montana" with the year shall be placed across the bottom of the plate. Such registration plate shall be treated with a reflectorized background material according to specifications prescribed by the division.

(4) The distinctive registration numbers shall begin with a number one or with a letter-number combination such as "A 1" or "AA 1", or any other similar combination of letters and numbers and be numbered consecutively for each series of plates. The distinctive registration number or letter-number combination assigned to the vehicle shall appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline, and the county number shall be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of such numerals and letters shall be determined by the division, provided that all county and registration numbers shall be of equal height.

(5) For the use of tax-exempt motor vehicles that are also exempt from the light vehicle license fee as provided in subsection (2)(a) of 61-3-532, in addition to the markings herein provided, number plates shall have thereon the following distinctive markings:

(a) For vehicles owned by the state the division may designate the prefix number for the various state departments, and all numbered plates issued to state departments shall bear the words "State Owned" and no year number will be indicated thereon as these numbered plates will be of a permanent nature and will be replaced by the division at such time when the physical condition of numbered plates requires same.

(b) For vehicles owned by the counties, municipalities, irrigation districts organized under the laws of Montana and not operating for profit, and school districts and used and operated by officials and employees thereof in line of duty as such, and for vehicles on loan from the United States government or the state of Montana, to, or owned by, the civil air patrol and used and operated by officials and employees thereof in the line of duty as such, there shall be placed on the number plates assigned thereto, in such position thereon as the division may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and school districts situated within each of said counties and those of the irrigation districts which obtain plates within each county shall begin with number one and be numbered consecutively.

(6) On all number plates assigned to motor vehicles of the truck and trailer type, other than tax-exempt trucks that are also exempt from the light vehicle license fee as provided in subsection (2)(a) of 61-3-532 and tax exempt trailers, there shall appear the letter "T" or the word "TRUCK" for plates assigned to trucks and the letters "TR" or the word "TRAILER" for plates assigned to trailers and housetrailers. The letters "MC" or the word "CYCLE" shall appear for plates assigned to vehicles of the motorcycle type.

(7) Number plates issued to a passenger car, truck, trailer, or vehicle of the motorcycle type may be transferred only to a replacement passenger car, truck, trailer, or motorcycle type vehicle. No registration or license fee may be assessed upon a transfer of a number plate under 61-3-317 and 61-3-335.

(8) For the purpose of this chapter, the several counties of the state shall be assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties shall be assigned numbers by the division as they may be formed, beginning with the number 57.

History: En. Sec. 3, Ch. 75, L. 1917; re-en. Sec. 1757, R.C.M. 1921; amd. Sec. 2, Ch. 158, L. 1933; re-en. Sec. 1757, R.C.M. 1935; amd. Sec. 1, Ch. 6, L. 1941; amd. Sec. 3, Ch. 88, L. 1943; amd. Sec. 1, Ch. 111, L. 1951; amd. Sec. 1, Ch. 29, L. 1953; amd. Sec. 1, Ch. 245, L. 1955; amd. Sec. 1, Ch. 236, L. 1957; amd. Sec. 1, Ch. 245, L. 1959; amd. Sec. 1, Ch. 245, L. 1965; amd. Sec. 1, Ch. 41, L. 1967; amd. Sec. 5, Ch. 127, L. 1969; amd. Sec. 1, Ch. 226, L. 1971; amd. Sec. 1, Ch. 41, L. 1975; amd. Sec. 1, Ch. 390, L. 1975; amd. Sec. 1, Ch. 243, L. 1977; amd. Sec. 3, Ch. 492, L. 1977; R.C.M. 1947, 53-106(part); amd. Sec. 26, Ch. 614, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "that are also exempt from the light vehicle license fee as provided in subsection (2)(a) of 61-3-532" after "For the use of tax-exempt motor vehicles" at the beginning of (5) and after "other than tax-exempt trucks" near the beginning of (6); inserted "tax exempt" after "provided in subsection (2)(a) of 61-3-532 and" in the middle of (6).

Effective Date: Section 66, Ch. 614, L. 1981, provided: "(1) Except as provided in subsection (2), this act is effective on January 1, 1982.

(2) Section 5 [61-3-535] is effective on passage and approval." Approved May 7, 1981.

61-3-333. Replacing number plates. In the event of loss, mutilation, or destruction of number plates, and/or validation devices, the owner of the registered motor vehicle may obtain from the division duplicates thereof upon filing sworn declaration showing such fact and payment of a fee of $2. In the event of loss, mutilation, or destruction of pioneer plates, duplicates may be obtained in the same manner upon payment of a fee of $5.

History: En. Subd. 7, Sec. 1, Ch. 158, L. 1933; re-en. Sec. 1759.6, R.C.M. 1935; amd. Sec. 1, Ch. 47, L. 1955; amd. Sec. 1, Ch. 86, L. 1969; amd. Sec. 3, Ch. 226, L. 1971; R.C.M. 1947, 53-120.

61-3-334. Expiration of registration on transfer of ownership of vehicle — duty to remove plates. Upon the transfer of ownership of a motor vehicle, the registration of the motor vehicle shall expire and it shall be the duty of the transferor immediately to remove the license plates from the vehicle.

History: En. Sec. 1, Ch. 127, L. 1969; R.C.M. 1947, 53-145.

61-3-335. Transfer of license plates to another motor vehicle. (1) Should the transferor make application for the registration of another motor vehicle at any time during the remainder of the current registration year as shown on the original certificate of registration, he may file an application in the office of the county treasurer where the motor vehicle is registered, upon a form to be prepared and furnished by the division, accompanied by the original certificate of registration, for the transfer of the license plates. The application for transfer of the license plates from the motor vehicle for which originally issued to a motor vehicle acquired by the same person in whose name the original license plates were issued shall be made within 20 days from date of acquiring the vehicle. The use of the license plates shall not be legalized until proper transfer of license plates has been made.

(2) License plates may be transferred pursuant to this section without transferring ownership of the first vehicle.

(3) Upon transfer of the license plates, the registration of the motor vehicle from which the license plates were transferred expires. The certificate of registration for such vehicle must be surrendered to the county treasurer with the application for transfer.

History: En. Sec. 2, Ch. 127, L. 1969; amd. Sec. 6, Ch. 138, L. 1971; amd. Sec. 3, Ch. 243, L. 1977; R.C.M. 1947, 53-146; amd. Sec. 1, Ch. 106, L. 1979; amd. Sec. 1, Ch. 415, L. 1979; amd. Sec. 27, Ch. 614, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "where the motor vehicle is registered" for "where the motor vehicle is taxable" in the middle of the first sentence of (1).

Effective Date: Section 66, Ch. 614, L. 1981, provided: "(1) Except as provided in subsection (2), this act is effective on January 1, 1982.

(2) Section 5 [61-3-535] is effective on passage and approval." Approved May 7, 1981.

61-3-336. Recycling license plates. The division is authorized to promote the recycling of used or outdated license plates for the metal content and may enter into contractual agreements with nonprofit organizations for the collection of used or outdated license plates and for their transportation to a central recycling point.

History: En. Sec. 1, Ch. 96, L. 1979.

Compiler's Comments

Codification. Section 2, Ch. 96, L. 1979, provided: "Section 1 is intended to be codified as an integral part of Title 61, chapter 3, part 3, and the provisions contained in Title 61 apply to section 1."

61-3-337 through 61-3-340 reserved.

61-3-341. Lost certificates. In the event any certificate of registration shall be lost, mutilated, or become illegible, the person to whom the same shall have been issued shall immediately make application for and may obtain a duplicate thereof, upon furnishing satisfactory information to the division of such facts and upon payment of a fee of $2.

History: En. Subd. 6, Sec. 2, Ch. 159, L. 1933; re-en. Sec. 1758.5, R.C.M. 1935; amd. Sec. 1, Ch. 96, L. 1953; amd. Sec. 28, Ch. 121, L. 1965; R.C.M. 1947, 53-113(part).

61-3-342. Temporary windshield sticker. Any purchaser of a motor vehicle who is unable to obtain license plates from the county treasurer at the time he makes application for registration or reregistration of the vehicle because the certificate of ownership is lost, in the possession of third parties, or in the process of reissuance in this state or elsewhere may, upon making affidavit to that effect upon a form prescribed by the division and upon the payment of a fee of $2 to be collected by the county treasurer and remitted to the division, obtain from the county treasurer of the county in which the vehicle is to be registered a temporary windshield sticker of such size, color, and design as the division may prescribe, to be validated by the county treasurer for a period of 60 days from the date of issuance. The purchaser, upon displaying the sticker on the lower right-hand corner of the windshield of the motor vehicle, may operate the vehicle during the period for which the windshield sticker has been validated without displaying the registration certificate or number plates or plate for the current year. The county treasurer may not sell, and no person may purchase, more than one 60-day temporary windshield sticker for any vehicle, the ownership of which has not changed since the issuance of the previous 60-day windshield sticker.

History: En. Sec. 5, Ch. 138, L. 1971; R.C.M. 1947, 53-109.3; amd. Sec. 28, Ch. 614, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "the county in which the vehicle is to be registered a temporary windshield sticker" for "the county in which said vehicle is subject to tax a temporary windshield sticker" in the middle of the first sentence; changed "shall be entitled to operate" to "may operate" in the second sentence; deleted "Provided, however," at the beginning of the third sentence; substituted "may not sell" for "shall not sell" in the third sentence; and substituted "no person may purchase" for "no person shall purchase" in the the third sentence; and made minor changes in grammar.

Effective Date: Section 66, Ch. 614, L. 1981, provided: "(1) Except as provided in subsection (2), this act is effective on January 1, 1982.

(2) Section 5 [61-3-535] is effective on passage and approval." Approved May 7, 1981.

Part 4

Special Registration

61-3-401. Definition of personalized license plates. Personalized license plates, as used in 61-3-401 through 61-3-406, mean license plates that have displayed upon them the registration number assigned to the passenger motor vehicle for which such registration number was issued in a combination of letters or numbers, or both, requested by the owner of the vehicle.

History: En. 53-150 by Sec. 3, Ch. 257, L. 1973; R.C.M. 1947, 53-150.

61-3-402. Personalized license plates authorized. Any person who is the registered owner of a motor vehicle, a truck, motor home, camping trailer, motorcycle, or other vehicle for the owner's personal use registered with the division or who makes application for original registration of a motor vehicle may upon payment of the fee prescribed in 61-3-406 apply to the division for personalized license plates in the manner prescribed in 61-3-405, which plates shall be affixed to the motor vehicle for which registration is sought in lieu of the regular license plates provided for in this chapter.

History: En. 53-148 by Sec. 1, Ch. 257, L. 1973; amd. Sec. 1, Ch. 53, L. 1975; R.C.M. 1947, 53-148.

61-3-403. Color and design of personalized plates — county designation. (1) The personalized license plates shall be the same color and design as regular passenger motor vehicle license plates and shall consist of numbers or letters, or any combination thereof not exceeding eight positions and not less than two positions, provided that there are no conflicts with existing passenger, commercial, trailer, motorcycle, or special license plate series under this title.

(2) Upon the issuance of personalized license plates or upon the reregistration of any motor vehicle assigned personalized license plates that do not bear a county designation or no longer bear the correct county designation, the division shall provide nonremovable stickers bearing the appropriate county designation which must be affixed to the license plates in use in accordance with instructions by the division.

History: En. 53-149 by Sec. 2, Ch. 257, L. 1973; R.C.M. 1947, 53-149; amd. Sec. 1, Ch. 318, L. 1979.

61-3-404. Personalized license plates restricted to registered owner. Personalized license plates shall be issued only to the registered owner of the vehicle upon which they are displayed.

History: En. 53-151 by Sec. 4, Ch. 257, L. 1973; R.C.M. 1947, 53-151.

61-3-405. Application for personalized plates. An applicant for personalized license plates or renewal of such plates in subsequent years pursuant to 61-3-401 through 61-3-406 shall file an application therefor in the form and by the date the division requires, indicating thereon the combination of letters or numbers, or both, requested as a registration number. There shall be no duplication of registration numbers, and the division may refuse to issue any combination of letters or numbers, or both, that may carry connotations offensive to good taste and decency or which are misleading or a duplication of license plates provided for elsewhere in this title.

History: En. 53-152 by Sec. 5, Ch. 257, L. 1973; R.C.M. 1947, 53-152; amd. Sec. 36, Ch. 421, L. 1979.

61-3-406. Fees for personalized plates — disposition. In addition to all other fees and taxes imposed by law, the applicant for a personalized license plate shall pay a fee of $20 for the original personalized license plate and a fee of $5 for each transfer or renewal thereof. All revenue derived from the fee as provided herein shall be deposited in the motor vehicle recording account of the earmarked revenue fund.

History: **En. 53-153 by Sec. 6, Ch. 257, L. 1973; R.C.M. 1947, 53-153.**

61-3-407 through 61-3-410 reserved.

61-3-411. Registration of motor vehicles owned and operated solely as collectors' items. (1) An owner of a motor vehicle more than 30 years old, used solely as a collectors' item and not for general transportation purposes, may file with the division an application for the registration of the motor vehicle, stating the name and address of the owner, the name and address of the person from whom purchased, the make of the motor vehicle, the gross weight thereof, the year and number of the model, and the manufacturer's identification number and serial number and setting forth a specific statement that the vehicle is owned and operated solely as a collectors' item and not for general transportation purposes. The application shall be sworn to before an officer authorized to administer oaths.

(2) The registration fee for all such motor vehicles weighing 2,850 pounds or less is $5, and the registration fee for all such motor vehicles weighing more than 2,850 pounds is $10.

(3) Upon receipt of the application for registration and payment of the registration fee, the division shall file the application and register the motor vehicle therein described in the manner specified in 61-3-101 and shall deliver to the applicant:

(a) for motor vehicles manufactured in 1933 or earlier, two license plates bearing the inscription "Pioneer—Montana" and the registration number; or

(b) for motor vehicles manufactured in 1934 or later and more than 30 years old, two license plates bearing the inscription "Vintage—Montana" and the registration number.

(4) The year of issuance shall not be shown on the plates.

(5) Annual renewal of the registration of any such motor vehicle is not required, and the registration is valid as long as the vehicle is in existence; provided, however, that upon sale of such motor vehicle, the purchaser is required to renew the registration thereof and pay the license fees hereinbefore specified.

History: **En. 53-106.1 by Sec. 1, Ch. 123, L. 1955; amd. Sec. 1, Ch. 86, L. 1963; amd. Sec. 1, Ch. 422, L. 1973; R.C.M. 1947, 53-106.1; amd. Sec. 37, Ch. 421, L. 1979.**

61-3-412 through 61-3-420 reserved.

61-3-421. Amateur radio operators — special license plate. Any motor vehicle owner and resident of this state who holds an unrevoked and unexpired official amateur radio station license and operator's license, "conditional" or higher class, issued by the federal communications commission of the United States, shall upon written application on form prescribed by the division, accompanied by proof of ownership of such amateur radio station license and operator's license, be issued lettered license plates in pairs (two identically lettered plates), in addition to the regular license plates prescribed by law. There shall be stamped or impressed upon such special license plates in clear lettering the official amateur radio call letters of such owner as assigned to such owner by said federal communications commission, and said plates so lettered shall be renewed concurrently with, and at the time of, the issuance of the regular motor vehicle license plates.

History: **En. Sec. 1, Ch. 2, L. 1957; amd. Sec. 1, Ch. 62, L. 1959; R.C.M. 1947, 53-106.2.**

61-3-422. Issuance — application — additional fee. The division shall issue said lettered license plates to amateur radio operators upon application showing:

(1) proof that applicant is the owner and holder of such amateur radio station license and operator's license;

(2) compliance with the state motor vehicle laws relating to registration and licensing of motor vehicles, and upon the payment, or proof of the payment, of the regular license fee for license plates as provided by law; and

(3) payment of a $5 additional fee.

History: **En. Sec. 2, Ch. 2, L. 1957; amd. Sec. 2, Ch. 62, L. 1959; R.C.M. 1947, 53-106.3.**

61-3-423. Rules — limit of one identical pair of plates for each operator. The division shall make such rules as may be necessary to procure compliance with all the laws of the state regulating the issuance of motor vehicle licenses relating to the use and operation of motor vehicles before issuing the lettered license plates. The division shall not issue more than one identical pair of lettered license plates for any licensed amateur radio station in any one licensing period.

History: **En. Sec. 3, Ch. 2, L. 1957; amd. Sec. 3, Ch. 62, L. 1959; R.C.M. 1947, 53-106.4.**

61-3-424. List of radio operators' special plates — distribution to public officials. The division shall, on or before July 1 of each year, furnish to the chief of the state highway patrol, to the director of civil defense, to the sheriff of each county in the state, to the chief of police of each incorporated city in the state, and to other public officials as the division shall deem necessary, an alphabetically arranged list of the names, addresses, and license plate numbers and letters of each person to whom a special license plate has been issued, and it shall be the duty of the division, sheriffs, and chiefs of police to maintain and keep current such lists for public information and inquiry, particularly in relation to public emergencies.

History: **En. Sec. 4, Ch. 2, L. 1957; R.C.M. 1947, 53-106.5.**

61-3-425. Special plates — how affixed to car — sale or transfer of auto — revocation or expiration of radio license. The lettered license plates, as herein provided, are to replace the regular license plates on the motor vehicle owned by said amateur radio licensee for such period of time as the amateur radio license is in force under the federal communications commission and the special license issued hereunder is in force, but no longer. Whenever such official amateur radio license is revoked or expires for whatever reason, such license plate shall be removed immediately by the owner of the motor vehicle and the regular plates again placed or mounted on the motor vehicle as in other cases. When the motor vehicle is sold or otherwise transferred, the owner and holder of valid official amateur radio station and operator's license shall have the right to transfer the lettered plates to another motor vehicle owned by him upon such reasonable conditions as may be prescribed by the division. On the revocation or expiration of the amateur radio station and operator's licenses, the lettered license plates as issued shall be returned and surrendered to the division.

History: **En. Sec. 5, Ch. 2, L. 1957; amd. Sec. 4, Ch. 62, L. 1959; amd. Sec. 6, Ch. 127, L. 1969; R.C.M. 1947, 53-106.6.**

61-3-426 through 61-3-430 reserved.

61-3-431. Special mobile equipment — exemption from registration and payment of fees and charges — identification plate — publicly owned special mobile equipment. (1) A person, firm, partnership, or corporation who owns, leases, or rents special mobile equipment as defined in 61-1-104(2) and occasionally moves that equipment on, over, or across the highways of the state is not subject to registration of that equipment or required to pay the fees and charges provided for in 61-3-502, 61-4-301 through 61-4-308, or part 2 of chapter 10. Prior to movement on the highways, however, each piece of equipment shall display an equipment identification plate or a dealer's license plate attached to the equipment.

(2) Annual application for the identification plate shall be made to the county treasurer before any piece of equipment is moved on the highways. Application shall be made on a form furnished by the department of justice, together with the payment of a fee of $5. The equipment for which a special mobile equipment plate is sought is subject to the assessment of personal property taxes on the date application is made for the plate. The personal property taxes assessed against the special mobile equipment must be paid before the issuance of a special mobile equipment plate. The fees collected under this section belong to the county road fund.

(3) The identification plate expires on December 31 of each year. If the expired identification plate is displayed, an owner of special mobile equipment registered under the provisions of this section is entitled to operate the equipment between January 1 and February 15 following expiration without displaying the identification plate or receipt of the current year.

(4) Publicly owned special mobile equipment, and implements of husbandry used exclusively by an owner in the conduct of his own farming operations, are exempt from this section.

History: **En. Sec. 7-207, Ch. 197, L. 1965; amd. Sec. 1, Ch. 232, L. 1967; amd. Sec. 1, Ch. 244, L. 1971; Sec. 32-3707, R.C.M. 1947; amd. and redes. 53-639.1 by Sec. 124, Ch. 316, L. 1974; amd. Sec. 3, Ch. 388, L. 1975; R.C.M. 1947, 53-639.1; amd. Sec. 1, Ch. 74, L. 1979; amd. Sec. 1, Ch. 39, L. 1981.**

61-3-432. Exemptions of vehicles not capable of operation on highways. Track-type tractors, other track mounted machinery and equipment, road rollers, and other similar equipment and machinery which cannot be self-propelled or towed upon the highways of this state and which must be transported by some type of hauling unit, are not subject to this chapter, 61-4-101 through 61-4-106, chapter 6, part 2 of chapter 10, or part 4 of chapter 12.

History: **En. Sec. 3, Ch. 150, L. 1963; Sec. 53-638.1, R.C.M. 1947; amd. and redes. 53-639.2 by Sec. 187, Ch. 316, L. 1974; R.C.M. 1947, 53-639.2; amd. Sec. 2, Ch. 39, L. 1981.**

61-3-433. Issuance of identification plate and receipt — contents. The county treasurer shall issue to an applicant for an equipment identification plate a single metal plate with a distinguishing number and a receipt for the fee collected, which receipt shall contain the name and address of the applicant, the number of the plate issued, the serial number of the equipment, and a brief description of that equipment.

History: En. Sec. 2, Ch. 183, L. 1955; amd. Sec. 188, Ch. 316, L. 1974; R.C.M. 1947, 53-640.

61-3-434. Attaching receipt to equipment — inspection. The receipt shall be carried in a suitable container attached to the equipment or immediately available for inspection of any peace officer or highway patrolman.

History: En. Sec. 3, Ch. 183, L. 1955; R.C.M. 1947, 53-641.

61-3-435 through 61-3-440 reserved.

61-3-441. Renumbered 61-3-524 by Code Commissioner, 1979.

61-3-442. Renumbered 61-3-525 by Code Commissioner, 1979.

Part 5

Taxes and Fees

61-3-501. When vehicle taxes and fees are due. (1) Property taxes, new car taxes, light vehicle license fees, and fees in lieu of tax on a motor home or travel trailer must be paid on the date of registration or reregistration of the vehicle.

(2) If the anniversary date for reregistration of a vehicle passes while the vehicle is owned and held for sale by a licensed new or used car dealer, property taxes, light vehicle license fees, or the fee in lieu of property taxes abate on such vehicle properly reported with the department of revenue until the vehicle is sold and thereafter the purchaser shall pay the pro rata balance of the taxes or the fee in lieu of tax due and owing on the vehicle.

(3) In the event a vehicle's registration period is changed under 61-3-315, all taxes and other fees due thereon shall be prorated and paid from the last day of the old period until the first day of the new period in which the vehicle shall be registered. Thereafter taxes and other fees must be paid from the first day of the new period for a minimum period of 1 year. When the change is to a later registration period, taxes and fees shall be prorated and paid based on the same tax year as the original registration period. Thereafter, during the appropriate anniversary registration period, each vehicle shall again register or reregister and shall pay all taxes and fees due thereon for a 12-month period.

History: (1), (2)En. 53-159 by Sec. 6, Ch. 74, L. 1975; Sec. 53-159, R.C.M. 1947; (3)En. 53-161 by Sec. 8, Ch. 74, L. 1975; amd. Sec. 2, Ch. 183, L. 1977; Sec. 53-161, R.C.M. 1947; R.C.M. 1947, 53-159, 53-161; amd. Sec. 12, Ch. 712, L. 1979; amd. Sec. 29, Ch. 614, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "light vehicle license fees" after "new car taxes" in (1) and after "property taxes" in (2).

Effective Date: Section 66, Ch. 614, L. 1981, provided: "(1) Except as provided in subsection (2), this act is effective on January 1, 1982.

(2) Section 5 [61-3-535] is effective on passage and approval." Approved May 7, 1981.

61-3-502. Sales tax on new motor vehicles — exemptions. (1) In consideration of the right to use the highways of the state, there is imposed a tax upon all sales of new motor vehicles for which a license is sought and an original application for title is made. The tax shall be paid by the purchaser when he applies for his original Montana license through the county treasurer.

(2) The sales tax shall be:

(a) 1 ½% of the f.o.b. factory list price or f.o.b. port-of-entry list price, during the first quarter of the year or prorated one-twelfth for each month or part of month for a registration period other than a calendar year or calendar quarter;

(b) 1 ⅛% of the list price during the second quarter of the year;

(c) ¾ of 1% during the third quarter of the year;

(d) ⅜ of 1% during the fourth quarter of the year.

(3) If the manufacturer or importer fails to furnish the f.o.b. factory list price or f.o.b. port-of-entry list price, the division may use published price lists.

(4) The proceeds from this tax shall be remitted to the state treasurer every 30 days for credit to the state highway account of the earmarked revenue fund.

(5) The new vehicle is subject to the light vehicle license fee, if applicable, but is not subject to any other assessment, taxation, or fee in lieu of tax during the calendar year in which the original application for title is made.

(6) (a) The applicant for original registration of any new and unused motor vehicle, or a new motor vehicle furnished without charge by a dealer to a school district for use as a traffic education motor vehicle by a school district operating a state-approved traffic education program within the state, whether or not previously licensed or titled to the school district (except a mobile home as defined in 15-1-101(1)), acquired by original contract after January 1 of any year, is required, whenever the vehicle has not been otherwise assessed, to pay the motor vehicle sales tax provided by this section irrespective of whether the vehicle was in the state of Montana on January 1 of the year.

(b) No motor vehicle may be registered or licensed under the provisions of this subsection unless the application for registration is accompanied by a statement of origin to be furnished by the dealer selling the vehicle, showing that the vehicle has not previously been registered or owned, except as otherwise provided herein, by any person, firm, corporation, or association that is not a new motor vehicle dealer holding a franchise or distribution agreement from a new car manufacturer, distributor, or importer.

(7) (a) Motor vehicles operating exclusively for transportation of persons for hire within the limits of incorporated cities or towns and within 15 miles from such limits are exempt from subsection (1).

(b) Motor vehicles brought or driven into Montana by a nonresident, migratory, bona fide agricultural worker temporarily employed in agricultural work in this state where those motor vehicles are used exclusively for transportation of agricultural workers are also exempt from subsection (1).

(c) Vehicles lawfully displaying a licensed dealer's plate as provided in 61-4-103 are exempt from subsection (1) when moving to or from a dealer's place of business when unloaded or loaded with dealer's property only, and in the case of vehicles having a gross loaded weight of less than 24,000 pounds, while being demonstrated in the course of the dealer's business.

History: (1) thru (5)En. Sec. 6-215, Ch. 197, L. 1965; amd. Sec. 5, Ch. 290, L. 1967; amd. Sec. 119, Ch. 316, L. 1974; amd. Sec. 15, Ch. 74, L. 1975; Sec. 32-3315, R.C.M. 1947; (6)En. Sec. 5, Ch. 75, L. 1917; amd. Sec. 1, Ch. 207, L. 1919; re-en. Sec. 1759, R.C.M. 1921; amd. Sec. 22, Ch. 113, L. 1925; amd. Sec. 2, Ch. 181, L. 1929; amd. Sec. 1, Ch. 158, L. 1931; amd. Sec. 1, Ch. 158, L. 1933; amd. Sec. 1, Ch. 72, L. 1937; amd. Sec. 1, Ch. 195, L. 1953; amd. Sec. 1, Ch. 256, L. 1955; amd. Sec. 1, Ch. 223, L. 1957; amd. Sec. 1, Ch. 245, L. 1963; amd. Sec. 1, Ch. 290, L. 1967; amd. Sec. 9, Ch. 296, L. 1967; amd. Sec. 3, Ch. 214, L. 1971; amd. Sec. 12, Ch. 74, L. 1975; amd. Sec. 1, Ch. 55, L. 1977; amd. Sec. 1, Ch. 521, L. 1977; amd. Sec. 43, Ch. 566, L. 1977; Sec. 53-114, R.C.M. 1947; (7)En. Sec. 12, Ch. 219, L. 1951; amd. Sec. 1, Ch. 262, L. 1967; amd. Sec. 1, Ch. 46, L. 1973; Sec. 53-626, R.C.M. 1947; amd. and redes. 32-3319 by Sec. 183, Ch. 316, L. 1974; Sec. 32-3319, R.C.M. 1947; R.C.M. 1947, 32-3315(part), 32-3319(part), 53-114(6); amd. Sec. 38, Ch. 421, L. 1979; amd. Sec. 13, Ch. 712, L. 1979; amd. Sec. 30, Ch. 614, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "is subject to the light vehicle license fee, if applicable, but" after "The new vehicle" at the beginning of (5).

Effective Date: Section 66, Ch. 614, L. 1981, provided: "(1) Except as provided in subsection (2), this act is effective on January 1, 1982.

(2) Section 5 [61-3-535] is effective on passage and approval." Approved May 7, 1981.

61-3-503. Assessment. (1) Except as provided in subsection (2), the following apply to the taxation of motor vehicles:

(a) Except as provided in subsection (1)(c), a person who files an application for registration or reregistration of a motor vehicle shall before filing such application with the county treasurer submit the application to the county assessor. The county assessor shall enter on the application in a space to be provided for that purpose the market value and taxable value of the vehicle as of January 1 of the year for which the application for registration is made.

(b) Except as provided in subsection (1)(c), motor vehicles are assessed for taxes on January 1 in each year irrespective of the time fixed by law for the assessment of other classes of personal property and irrespective of whether the levy and tax may be a lien upon real property within the state. In no event may any motor vehicle be subject to assessment, levy, and taxation more than once in each year.

(c) Vehicles subject to the provisions of 61-3-313 through 61-3-316 shall be assessed as of the first day of the registration period, using the market value as of January 1 of the year of assessment of the vehicle as contained in the most recent volume of the Mountain States Edition of the National Automobile Dealers Association Official Used Car Guide; and a lien for taxes and fees due thereon shall occur on the anniversary date of the registration and shall continue until such fees and taxes have been paid.

(2) The provisions of subsections (1)(a) through (1)(c) do not apply to automobiles and trucks having a rated capacity of three-quarters of a ton or less, motor homes, travel trailers, or mobile homes as defined in 15-1-101(1).

History: Ap. p. Sec. 5, Ch. 75, L. 1917; amd. Sec. 1, Ch. 207, L. 1919; re-en. Sec. 1759, R.C.M. 1921; amd. Sec. 22, Ch. 113, L. 1925; amd. Sec. 2, Ch. 181, L. 1929; amd. Sec. 1, Ch. 158, L. 1931; amd. Sec. 1, Ch. 158, L. 1933; re-en. Sec. 1759, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1937; amd. Sec. 1, Ch. 195, L. 1953; amd. Sec. 1, Ch. 256, L. 1955; amd. Sec. 1, Ch. 223, L. 1957; amd. Sec. 1, Ch. 245, L. 1963; amd. Sec. 1, Ch. 290, L. 1967; amd. Sec. 9, Ch. 296, L. 1967; amd. Sec. 3, Ch. 214, L. 1971; amd. Sec. 12, Ch. 74, L. 1975; amd. Sec. 1, Ch. 55, L. 1977; amd. Sec. 1, Ch. 521, L. 1977; amd. Sec. 43, Ch. 566, L. 1977; Sec. 53-114, R.C.M. 1947; Ap. p. Sec. 9, Ch. 74, L. 1975;

Sec. 53-162, R.C.M. 1947; R.C.M. 1947, 53-114(2), (5), 53-162; amd. Sec. 39, Ch. 421, L. 1979; amd. Sec. 14, Ch. 712, L. 1979; amd. Sec. 2, Ch. 262, L. 1981; amd. Sec. 31, Ch. 614, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 262 inserted "Except as provided in subsection (1)(c)" at the beginning of (1)(a); substituted "as of January 1 of" for "for" after "vehicle" in the last sentence of (1)(a); inserted "using the market value as of January 1 of the year of assessment of the vehicle as contained in the most recent volume of the Mountain States Edition of the National Automobile Dealers Association Official Used Car Guide" in (1)(c).

Chapter 614 renumbered subsections (1) through (3) as (1)(a)(b)(c) and added the language in subsection (1) before subsection (1)(a); deleted "other than a motor home, travel trailer, or a mobile home as defined in 15-1-101(1)," after "or reregistration of a motor vehicle" near the beginning of (1)(a) and after "motor vehicles" near the beginning of (1)(b); changed "subsection (3)" to "subsection (1)(c)" near the beginning of (1)(b); and added subsection (2).

Applicability: Section 3, Ch. 262, L. 1981, provided: "This act applies to the assessment of motor vehicles on or after January 1, 1981."

Effective Date: Section 66, Ch. 614, L. 1981, provided: "(1) Except as provided in subsection (2), this act is effective on January 1, 1982.

(2) Section 5 [61-3-535] is effective on passage and approval." Approved May 7, 1981.

61-3-504. Computation of tax. The amount of taxes on a motor vehicle, other than an automobile, truck having a rated capacity of three-quarters of a ton or less, motor home, travel trailer, or mobile home as defined in 15-1-101(1), is computed and determined by the county treasurer on the basis of the levy of the year preceding the current year of application for registration or reregistration. The determination is entered on the application form in a space provided therefor.

History: En. Sec. 5, Ch. 75, L. 1917; amd. Sec. 1, Ch. 207, L. 1919; re-en. Sec. 1759, R.C.M. 1921; amd. Sec. 22, Ch. 113, L. 1925; amd. Sec. 2, Ch. 181, L. 1929; amd. Sec. 1, Ch. 158, L. 1931; amd. Sec. 1, Ch. 158, L. 1933; re-en. Sec. 1759, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1937; amd. Sec. 1, Ch. 195, L. 1953; amd. Sec. 1, Ch. 256, L. 1955; amd. Sec. 1, Ch. 223, L. 1957; amd. Sec. 1, Ch. 245, L. 1963; amd. Sec. 1, Ch. 290, L. 1967; amd. Sec. 9, Ch. 296, L. 1967; amd. Sec. 3, Ch. 214, L. 1971; amd. Sec. 12, Ch. 74, L. 1975; amd. Sec. 1, Ch. 55, L. 1977; amd. Sec. 1, Ch. 521, L. 1977; amd. Sec. 43, Ch. 566, L. 1977; R.C.M. 1947, 53-114(4); amd. Sec. 15, Ch. 712, L. 1979; amd. Sec. 32, Ch. 614, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "an automobile, truck having a rated capacity of three-quarters of a ton or less" after "The amount of taxes on a motor vehicle, other than" at the beginning of the section.

Effective Date: Section 66, Ch. 614, L. 1981, provided: "(1) Except as provided in subsection (2), this act is effective on January 1, 1982.

(2) Section 5 [61-3-535] is effective on passage and approval." Approved May 7, 1981.

61-3-505. Payment of taxes. Upon accepting application for registration or reregistration of any motor vehicle which is subject to taxation in this state on January 1 in any year and upon payment of taxes, the county treasurer shall stamp on the application "taxes on this vehicle due January 1 of current year paid by applicant, prior applicant, or owner, and this vehicle is eligible for registration". Upon accepting application for registration of any motor vehicle which was not subject to taxation in this state on January 1 in any year, the county treasurer shall indicate the fact by proper entry on the application.

History: En. Sec. 5, Ch. 75, L. 1917; amd. Sec. 1, Ch. 207, L. 1919; re-en. Sec. 1759, R.C.M. 1921; amd. Sec. 22, Ch. 113, L. 1925; amd. Sec. 2, Ch. 181, L. 1929; amd. Sec. 1, Ch. 158, L. 1931; amd. Sec. 1, Ch. 158, L. 1933; re-en. Sec. 1759, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1937; amd. Sec. 1, Ch. 195, L. 1953; amd. Sec. 1, Ch. 256, L. 1955; amd. Sec. 1, Ch. 223, L. 1957; amd. Sec. 1, Ch. 245, L. 1963; amd. Sec. 1, Ch. 290, L. 1967; amd. Sec. 9, Ch. 296, L. 1967; amd. Sec. 3, Ch. 214, L. 1971; amd. Sec. 12, Ch. 74, L. 1975; amd. Sec. 1, Ch. 55, L. 1977; amd. Sec. 1, Ch. 521, L. 1977; amd. Sec. 43, Ch. 566, L. 1977; R.C.M. 1947, 53-114(7), (8); amd. Sec. 40, Ch. 421, L. 1979.

61-3-506. Rules. The department of revenue shall adopt rules for the payment of property taxes and the department of highways shall adopt rules for the payment of new car taxes under the provisions of 61-3-313 through 61-3-316 and 61-3-501. The department of revenue may adopt regulations for the proration of taxes for the implementation and administration of 61-3-313 through 61-3-316 and 61-3-501, but shall specifically provide that new car taxes shall be for a full registration period of not less than 11 months and not more than 13 months.

History: **En. 53-160 by Sec. 7, Ch. 74, L. 1975; R.C.M. 1947, 53-160.**

61-3-507. Exemption. Motor vehicles subject to anniversary date registration as provided in 61-3-313 through 61-3-316 are exempt from the provisions of 61-3-503(1)(b) and 61-3-505.

History: **En. Sec. 5, Ch. 75, L. 1917; amd. Sec. 1, Ch. 207, L. 1919; re-en. Sec. 1759, R.C.M. 1921; amd. Sec. 22, Ch. 113, L. 1925; amd. Sec. 2, Ch. 181, L. 1929; amd. Sec. 1, Ch. 158, L. 1931; amd. Sec. 1, Ch. 158, L. 1933; re-en. Sec. 1759, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1937; amd. Sec. 1, Ch. 195, L. 1953; amd. Sec. 1, Ch. 256, L. 1955; amd. Sec. 1, Ch. 223, L. 1957; amd. Sec. 1, Ch. 245, L. 1963; amd. Sec. 1, Ch. 290, L. 1967; amd. Sec. 9, Ch. 296, L. 1967; amd. Sec. 3, Ch. 214, L. 1971; amd. Sec. 12, Ch. 74, L. 1975; amd. Sec. 1, Ch. 55, L. 1977; amd. Sec. 1, Ch. 521, L. 1977; amd. Sec. 43, Ch. 566, L. 1977; R.C.M. 1947, 53-114(9); amd. Sec. 33, Ch. 614, L. 1981.**

Compiler's Comments

1981 Amendment: Changed internal reference from 61-3-503(2) to 61-3-503(1)(b) to reflect renumbering of 61-3-503.

Effective Date: Section 66, Ch. 614, L. 1981, provided: "(1) Except as provided in subsection (2), this act is effective on January 1, 1982.

(2) Section 5 [61-3-535] is effective on passage and approval." Approved May 7, 1981.

61-3-508. Junk vehicle disposal fee. A special junk vehicle disposal fee shall be assessed on each new application for a motor vehicle title and on each transfer of a motor vehicle title in the amount of $1.50 on passenger cars and trucks under 8,001 pounds GVW. An additional special junk vehicle disposal fee shall be assessed in the amount of 50 cents on each passenger car and truck under 8,001 pounds GVW registered for licensing. The fees shall be collected by the county treasurer. However, the following are exempt from payment of the fees:

(1) vehicles leased or owned by the state or by a county or municipality;

(2) vehicles used for transportation by nonresident, migratory workers temporarily employed in agricultural work in this state;

(3) vehicles displaying dealer's license plates, as provided in 61-4-103, while owned by a dealer; and

(4) housetrailers or equipment which is not self-propelled or which requires towing upon a highway of this state.

History: **En. Sec. 7, Ch. 410, L. 1973; amd. Sec. 1, Ch. 52, L. 1975; amd. Sec. 2, Ch. 520, L. 1975; amd. Sec. 18, Ch. 140, L. 1977; amd. Sec. 5, Ch. 252, L. 1977; R.C.M. 1947, 69-6807(2); amd. Sec. 41, Ch. 421, L. 1979.**

61-3-509. Disposition of taxes and fees in lieu of tax. The county treasurer shall credit all taxes on motor vehicles, light vehicle license fees provided for in 61-3-532, and fees in lieu of tax on motor homes and travel trailers collected to a motor vehicle suspense fund, and at some time between March 1 and March 10 of each year and every 60 days thereafter, the county treasurer shall distribute the money in the motor vehicle suspense fund in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as personal property taxes are distributed.

History: **En. Subd. 4, Sec. 1, Ch. 158, L. 1933; re-en. Sec. 1759.3, R.C.M. 1935; amd. Sec. 4, Ch. 72, L. 1937; amd. Sec. 1, Ch. 154, L. 1943; amd. Sec. 1, Ch. 200, L. 1945; amd. Sec. 29, Ch. 121, L. 1965; R.C.M. 1947, 53-117; amd. Sec. 16, Ch. 712, L. 1979; amd. Sec. 34, Ch. 614, L. 1981.**

Compiler's Comments

1981 Amendment: Inserted "light vehicle license fees provided for in 61-3-532" after "all taxes on motor vehicles" near the beginning of the section; and deleted "other" before "personal property taxes" near the end of the section.

Effective Date: Section 66, Ch. 614, L. 1981, provided: "(1) Except as provided in subsection (2), this act is effective on January 1, 1982.

(2) Section 5 [61-3-535] is effective on passage and approval." Approved May 7, 1981.

61-3-510 through 61-3-520 reserved.

61-3-521. Fee in lieu of tax for certain vehicles. (1) There is a fee in lieu of property tax imposed on motor homes, travel trailers, and campers. The fee is in addition to annual registration fees.

(2) The provisions of 61-10-208 do not apply to a vehicle that qualifies under subsection (1) above.

(3) The fee imposed by subsection (1) above need not be paid by a dealer for vehicles that constitute inventory of the dealership.

History: **En. Sec. 1, Ch. 712, L. 1979; amd. Sec. 1, Ch. 13, L. 1981.**

Compiler's Comments

1981 Amendment: Inserted subsection (2).

Effective Date: Section 2, Ch. 13, L. 1981, provided: "This act is effective on passage and approval." Approved February 20, 1981.

Applicability: Section 31, Ch. 712, L. 1979, provided: "This act applies to motor homes, travel trailers, campers, and snowmobiles registered during and after 1980."

Incorporation Into Existing Law: This section, 61-3-522, and 61-3-523, were enacted without any codification instructions. The apparent intent of the Legislature was that they become part of Title 61, chapter 3, and the Code Commissioner has codified them accordingly. This arrangement may affect other sections in Chapter 3, including 61-3-601 and 61-3-602. See 1-11-103(4).

61-3-522. Schedule of fees for motor homes. (1) The owner of a motor home shall pay a fee based on the age of the motor home according to the following schedule:

less than 2 years old	$200
2 years old and less than 3 years old	180
3 years old and less than 4 years old	145
4 years old and less than 5 years old	100
5 years old and less than 6 years old	75
6 years old and less than 7 years old	50
7 years old and less than 8 years old	25
8 years old and older	15

(2) The age of a motor home is determined by subtracting the manufacturer's designated model year from the current calendar year.

History: **En. Sec. 2, Ch. 712, L. 1979.**

61-3-523. Schedule of fees for travel trailers and campers. (1) The fee imposed by 61-3-521 on a travel trailer less than 3 years old is $40. In all other cases the fee is $15.

(2) The fee imposed by 61-3-521 on a camper less than 3 years old is $35. In all other cases the fee is $15.

(3) The age of a travel trailer or camper is determined by subtracting the manufacturer's designated model year from the current calendar year.

History: **En. Sec. 3, Ch. 712, L. 1979.**

61-3-524. Fee-paid decal required on camper — application for decal — application fee — issuance. (1) No camper, subject to taxation in Montana, may be operated by any person on the public highways or streets in this state unless there is displayed in a conspicuous place thereon a decal as visual proof that the fee in lieu of tax has been paid thereon for the current year.

(2) Application for the issuance of the decal shall be made to the department of revenue or the county treasurer upon forms to be furnished for this purpose, which may be obtained from the department or at the county treasurer's office in the county wherein the owner resides, and is to provide for substantially the following information:

(a) name of owner;
(b) address;
(c) name of manufacturer;
(d) model number;
(e) make;
(f) year of manufacture;
(g) statement evidencing payment of the fee in lieu of property tax; and
(h) such other information as the department may require.

(3) The application must be signed by the county treasurer and transmitted by him to the department accompanied by an application fee of $1. Upon receipt of the application in approved form the department or county treasurer shall issue to the applicant a decal in the style and design prescribed by the department and of a different color than the preceding year, numbered numerically.

History: **En. Sec. 2, Ch. 414, L. 1973; R.C.M. 1947, 53-645; amd. Sec. 10, Ch. 712, L. 1979; Sec. 61-3-441, MCA 1979; redes. 61-3-524 by Code Commissioner, 1979.**

61-3-525. Annual application for decals. Application may be made to the department of revenue or county treasurer for the issuance of camper decals annually when the motor vehicle to which the camper is customarily attached is registered.

History: **En. Sec. 4, Ch. 414, L. 1973; amd. Sec. 1, Ch. 211, L. 1977; R.C.M. 1947, 53-647; amd. Sec. 11, Ch. 712, L. 1979; Sec. 61-3-442, MCA 1979; redes. 61-3-525 by Code Commissioner, 1979.**

61-3-526 through 61-3-530 reserved.

61-3-531. Light vehicle fee — definitions. As used in 61-3-531 through 61-3-536, the following definitions apply:

(1) "Light vehicle" means an automobile or a truck having a rated capacity of three-quarters of a ton or less.

(2) "Vehicle age" means the difference between the calendar year of the first day of the registration period and the manufacturer's designated model year.

History: **En. Sec. 1, Ch. 614, L. 1981.**

Compiler's Comments

1981 Title: The title to Ch. 614, L. 1981 (SB 355), read: "An act to replace the present system of taxation of automobiles and light trucks with a fee system; adjusting the percentage limits on certain financial activities by local governments and providing financial assistance to local governments because of the change in tax base; amending sections . . .; appropriating funds to reimburse local governments for revenue loss caused by implementation of the fee system and providing effective dates."

Codification Instruction: Section 65, Ch. 614, L. 1981, provided: "Sections 1 through 6 [61-3-531 through 61-3-536] are intended to be codified as an integral part of Title 61, chapter 3, part 5, and the provisions of Title 61 apply to sections 1 through 6."

Effective Date: Section 66, Ch. 614, L. 1981, provided: "(1) Except as provided in subsection (2), this act is effective January 1, 1982.

(2) Section 5 [61-3-535] is effective on passage and approval." Approved May 7, 1981.

61-3-532. Light vehicle license fee. (1) Except as provided in subsection (2), light vehicles are subject to a license fee. This fee is imposed in lieu of a property tax and is in addition to the tax on new motor vehicles.

(2) (a) Light vehicles that meet the description of property exempt from taxation under the provisions of subsections (a), (c), (d), or (e) of 15-6-201(1) or 15-6-203(2) are exempt from the fee imposed in subsection (1) of this section.

(b) A dealer for light vehicles is not required to pay the license fee for light vehicles held for sale or used in the dealer's business in selling or demonstrating the vehicles. Vehicles exempt under this subsection may not be used for the personal use of the dealer, his family, or employees or for any use not necessary in the pursuit of business.

History: En. Sec. 2, Ch. 614, L. 1981.

Compiler's Comments

1981 Title: The title to Ch. 614, L. 1981 (SB 355), read: "An act to replace the present system of taxation of automobiles and light trucks with a fee system; adjusting the percentage limits on certain financial activities by local governments and providing financial assistance to local governments because of the change in tax base; amending sections . . .; appropriating funds to reimburse local governments for revenue loss caused by implementation of the fee system and providing effective dates."

Codification Instruction: Section 65, Ch. 614, L. 1981, provided: "Sections 1 through 6 [61-3-531 through 61-3-536] are intended to be codified as an integral part of Title 61, chapter 3, part 5, and the provisions of Title 61 apply to sections 1 through 6."

Effective Date: Section 66, Ch. 614, L. 1981, provided: "(1) Except as provided in subsection (2), this act is effective January 1, 1982.

(2) Section 5 [61-3-535] is effective on passage and approval." Approved May 7, 1981.

61-3-533. Schedule of fees for automobiles and light trucks. (1) Except as provided in subsection (3), the following schedule, based on vehicle age and weight, is used to determine the fee imposed by 61-3-532:

Vehicle Age	Weight	
	2,850 pounds or less	More than 2,850 pounds
Less than or equal to 4 years	$70	$90
More than 4 years and less than 8 years	40	50
More than 8 years	10	15

(2) The fee for a light vehicle is the appropriate dollar amount from the table in subsection (1) multiplied by the ratio of the PCE for the second quarter of the year prior to the year of licensing to the PCE for the second quarter of 1981. "PCE" means the implicit price deflator for personal consumption expenditures as published quarterly in the Survey of Current Business by the bureau of economic analysis of the United States department of commerce.

(3) The light vehicle license fee for disabled veterans qualifying under the provisions of 10-2-301 through 10-2-304 is $5.

History: En. Sec. 3, Ch. 614, L. 1981.

Compiler's Comments

1981 Title: The title to Ch. 614, L. 1981 (SB 355), read: "An act to replace the present system of taxation of automobiles and light trucks with a fee system; adjusting the percentage limits on certain financial activities by local governments and providing financial assistance to local governments because of the change in tax base; amending sections . . .; appropriating funds to reimburse local governments for revenue loss caused by implementation of the fee system and providing effective dates."

Codification Instruction: Section 65, Ch. 614, L. 1981, provided: "Sections 1 through 6 [61-3-531 through 61-3-536] are intended to be codified as an integral part of Title 61, chapter 3, part 5, and the provisions of Title 61 apply to sections 1 through 6."

Effective Date: Section 66, Ch. 614, L. 1981, provided: "(1) Except as provided in subsection (2), this act is effective January 1, 1982.

(2) Section 5 [61-3-535] is effective on passage and approval." Approved May 7, 1981.

61-3-534. Payment of fee required for operation. (1) No light vehicle subject to the fee imposed by 61-3-532 may be operated unless the fee has been paid and the vehicle is licensed.

(2) A properly licensed and registered light vehicle may be operated within Montana, subject to all applicable federal, state, and local laws.

History: En. Sec. 4, Ch. 614, L. 1981.

Compiler's Comments

1981 Title: The title to Ch. 614, L. 1981 (SB 355), read: "An act to replace the present system of taxation of automobiles and light trucks with a fee system; adjusting the percentage limits on certain financial activities by local governments and providing financial assistance to local governments because of the change in tax base; amending sections . . .; appropriating funds to reimburse local governments for revenue loss caused by implementation of the fee system and providing effective dates."

Codification Instruction: Section 65, Ch. 614, L. 1981, provided: "Sections 1 through 6 [61-3-531 through 61-3-536] are intended to be codified as an integral part of Title 61, chapter 3, part 5, and the provisions of Title 61 apply to sections 1 through 6."

Effective Date: Section 66, Ch. 614, L. 1981, provided: "(1) Except as provided in subsection (2), this act is effective January 1, 1982.

(2) Section 5 [61-3-535] is effective on passage and approval." Approved May 7, 1981.

61-3-535. Light vehicle reregistration by mail. (1) The department of revenue shall develop a procedure to permit the reregistration of light vehicles with the county treasurer by mail at the option of the owner of the vehicle. The option to reregister by mail need only be made available for vehicles registered at the close of the expiring registration period in the name of the applicant for reregistration.

(2) The form to be returned to the county treasurer by the applicant, with the appropriate fees, is to contain a statement, to be subscribed to by the applicant, stating compliance with the financial liability requirements of 61-6-301.

(3) The procedure for mail reregistration must be in effect by January 1, 1982.

(4) The department of revenue may adopt rules to implement the mail reregistration procedure.

History: En. Sec. 5, Ch. 614, L. 1981.

Compiler's Comments

Statement of Intent: The statement of intent attached to SB 355 (Ch. 614, L. 1981), provided: "It is the purpose of this act to replace the present property tax on automobiles and light trucks (three-quarter ton capacity or less) by a license fee based on the age and weight of the vehicle. It is intended that this system commence with registration of vehicles on January 1, 1982.

In order to facilitate registration and to reduce energy consumption, the Department of

Revenue is mandated to develop a procedure for mail registration. More precisely, the procedure relates to reregistration. Registration for the first time, as well as transfers of registration, will still be done in person at the office of the county treasurer. It is anticipated that the reregistration procedure will involve mailing to the vehicle owner an application specifying the vehicle and the various fees that are due for registration. The owner will sign the application and return the signed application and the fee to the county treasurer. Upon receipt of the signed application, the treasurer shall send the applicant a valid registration and tabs to be attached to the license plates. The rules to be adopted by the Department of Revenue should provide the details to implement the above described procedure. The emphasis should be on the convenience of the vehicle owner.

The financial aid provisions of the bill are designed to provide a mechanism to give financial relief to local governments due to the loss of revenue from automobile and light truck property tax."

1981 Title: The title to Ch. 614, L. 1981 (SB 355), read: "An act to replace the present system of taxation of automobiles and light trucks with a fee system; adjusting the percentage limits on certain financial activities by local governments and providing financial assistance to local governments because of the change in tax base; amending sections . . .; appropriating funds to reimburse local governments for revenue loss caused by implementation of the fee system and providing effective dates."

Codification Instruction: Section 65, Ch. 614, L. 1981, provided: "Sections 1 through 6 [61-3-531 through 61-3-536] are intended to be codified as an integral part of Title 61, chapter 3, part 5, and the provisions of Title 61 apply to sections 1 through 6."

Effective Date: Section 66, Ch. 614, L. 1981, provided: "(1) Except as provided in subsection (2), this act is effective January 1, 1982.

(2) Section 5 [61-3-535] is effective on passage and approval." Approved May 7, 1981.

61-3-536. State aid for local government. (1) Each county treasurer shall compute:

(a) the total amount received during the period from January 1, 1981, to December 31, 1981, for property taxes on automobiles and trucks having a rated capacity of three-quarters of a ton or less, denoted CT;

(b) the total amount that would have been received during the same period if the license fee system had been in effect, denoted CF; and

(c) the number of light vehicles registered in the county on December 31, 1981, denoted NC.

(2) The three quantities, CT, CF, and NC, shall be certified to the department of revenue by February 1, 1982. The department shall compute for each county a quantity called county revenue loss, denoted CRL, and county loss per vehicle, denoted CLV, and defined as follows:

(a) CRL = larger of:

(i) 0; or

(ii) CT - CF;

(b) CLV = CRL/NC.

(3) Prior to February 1 of year denoted Y, the county treasurer shall determine and certify to the department the number of light vehicles registered in the county on December 31 of the prior year, denoted NC(Y).

(4) On March 1 of year Y, the department shall transmit to each county treasurer a warrant in the amount of CLV x NC(Y).

(5) Upon receipt of the payment provided for in subsection (4), the county treasurer shall credit the payment to a motor vehicle suspense fund and, at some time between March 15 and March 30, shall distribute the payment in the same manner as funds are distributed to the taxing jurisdictions as provided in 61-3-509.

History: En. Sec. 6, Ch. 614, L. 1981.

Compiler's Comments

Statement of Intent: The statement of intent attached to SB 355 (Ch. 614, L. 1981), provided: "It is the purpose of this act to replace the present property tax on automobiles and light trucks (three-quarter ton capacity or less) by a license fee based on the age and weight of the vehicle. It is intended that this system commence with registration of vehicles on January 1, 1982.

In order to facilitate registration and to reduce energy consumption, the Department of Revenue is mandated to develop a procedure for mail registration. More precisely, the procedure relates to reregistration. Registration for the first time, as well as transfers of registration, will still be done in person at the office of the county treasurer. It is anticipated that the reregistration procedure will involve mailing to the vehicle owner an application specifying the vehicle and the various fees that are due for registration. The owner will sign the application and return the signed application and the fee to the county treasurer. Upon receipt of the signed application, the treasurer shall send the applicant a valid registration and tabs to be attached to the license plates. The rules to be adopted by the Department of Revenue should provide the details to implement the above described procedure. The emphasis should be on the convenience of the vehicle owner.

The financial aid provisions of the bill are designed to provide a mechanism to give financial relief to local governments due to the loss of revenue from automobile and light truck property tax."

1981 Title: The title to Ch. 614, L. 1981 (SB 355), read: "An act to replace the present system of taxation of automobiles and light trucks with a fee system; adjusting the percentage limits on certain financial activities by local governments and providing financial assistance to local governments because of the change in tax base; amending sections . . .; appropriating funds to reimburse local governments for revenue loss caused by implementation of the fee system and providing effective dates."

Codification Instruction: Section 65, Ch. 614, L. 1981, provided: "Sections 1 through 6 [61-3-531 through 61-3-536] are intended to be codified as an integral part of Title 61, chapter 3, part 5, and the provisions of Title 61 apply to sections 1 through 6."

Effective Date: Section 66, Ch. 614, L. 1981, provided: "(1) Except as provided in subsection (2), this act is effective January 1, 1982.

(2) Section 5 [61-3-535] is effective on passage and approval." Approved May 7, 1981.

Appropriation: Section 67, Ch. 614, L. 1981, provided: "There is appropriated from the general fund the sum of $30,000,000 for the biennium ending June 30, 1983, to the department of revenue to fund the state payment to local governments provided for in 61-3-536."

Part 6

Penalties — Enforcement

61-3-601. Penalty for violations. Except as otherwise provided, a violation of any of the provisions of this chapter is a misdemeanor and is punishable by a fine not exceeding $25. Nothing contained herein prevents the prosecution of a person for an offense committed under any other law.

History: En. Sec. 2, Ch. 158, L. 1931; re-en. Sec. 1755.1, R.C.M. 1935; amd. Sec. 1, Ch. 122, L. 1961; amd. Sec. 2, Ch. 256, L. 1965; R.C.M. 1947, 53-102(part); amd. Sec. 42, Ch. 421, L. 1979.

61-3-602. Enforcement. It is mandatory upon all police and peace officers of the state, of the counties of the state, and of towns, cities, and villages to carry out the provisions of this chapter and 61-4-101 through 61-4-105.

History: En. Sec. 2, Ch. 158, L. 1931; re-en. Sec. 1755.1, R.C.M. 1935; amd. Sec. 1, Ch. 122, L. 1961; amd. Sec. 2, Ch. 256, L. 1965; R.C.M. 1947, 53-102(part); amd. Sec. 43, Ch. 421, L. 1979.

61-3-603. Penalty for alteration or forgery of certificate of ownership or assignment thereof. Any person who alters or forges or causes to be altered or forged any motor vehicle certificate of ownership or any assignment thereof or who holds or uses any such certificate or assignment knowing it to have been altered or forged is guilty of a felony and upon conviction thereof is subject to a fine of not more than $5,000 or to imprisonment in any penal institution within the state for a period of not more than 10 years, or both, in the discretion of the court.

History: En. Sec. 12, Ch. 113, L. 1925; re-en. Sec. 1763.4, R.C.M. 1935; amd. Sec. 1, Ch. 334, L. 1969; R.C.M. 1947, 53-136; amd. Sec. 44, Ch. 421, L. 1979.

61-3-604. Penalty for altering identification number. (1) A person who willfully removes or falsifies an identification number of a motor vehicle or motor vehicle engine is guilty of a misdemeanor.

(2) Any person or persons, firm, or corporation which sells or offers for sale in this state a vehicle the original vehicle identification number of which has been destroyed, removed, altered, covered, or defaced, with the exception of electrically propelled vehicles, is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $200 or more than $500 and by imprisonment in the county jail for a term of not less than 30 days or more than 180 days. Upon a second or subsequent conviction under this subsection, the punishment shall be imprisonment in the state prison for a term of not less than 1 year or more than 5 years or a fine in an amount not to exceed $50,000, or both such fine and imprisonment.

History: (1)En. Sec. 1, Ch. 256, L. 1969; Sec. 53-139.1, R.C.M. 1947; (2)En. Sec. 15, Ch. 113, L. 1925; re-en. Sec. 1763.7, R.C.M. 1935; amd. Sec. 31, Ch. 121, L. 1965; Sec. 53-139, R.C.M 1947; R.C.M. 1947, 53-139(part), 53-139.1; amd. Sec. 45, Ch. 421, L. 1979; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

61-3-605. Penalty for nonpayment of sales tax. Any owner or operator of a motortruck, truck tractor, trailer, semitrailer, bus, or automobile who violates any provision of 61-3-502 is guilty of a misdemeanor and shall be punished by a fine of not more than $300, or by a sentence of not more than 60 days in the county jail, or both.

History: En. Sec. 6-216, Ch. 197, L. 1965; R.C.M. 1947, 32-3316.

61-3-606. Penalty for violation of camper decal requirement. Operation of a camper in violation of 61-3-524 is a misdemeanor punishable by a fine not to exceed $50.

History: En. Sec. 3, Ch. 414, L. 1973; R.C.M. 1947, 53-646.

Part 7

Registration of Foreign Vehicles

61-3-701. Foreign vehicles used in gainful occupation to be registered — reciprocity. (1) Before any foreign licensed motor vehicle may be operated on the highways of this state for hire, compensation, or profit or before the owner and/or user thereof uses the vehicle if such owner and/or user is engaged in gainful occupation or business enterprise in the state, including highway work, the owner of the vehicle shall make application to a county treasurer for registration upon an application form furnished by the division. Upon satisfactory evidence of ownership submitted to the county treasurer and the payment of property taxes, if appropriate, as required by 15-8-201 through 15-8-203 or 15-24-301 or the payment of the light vehicle license fee as provided by 61-3-532, the treasurer shall accept the application for registration and shall collect the regular license fee required for the vehicle.

(2) The treasurer shall thereupon issue to the applicant a copy of the application entitled "Owner's Certificate of Registration and Payment Receipt" and forward a duplicate copy of the certificate to the division. The treasurer shall at the same time issue to the applicant the proper license plates or other identification markers, which shall at all times be displayed upon the vehicle when operated or driven upon roads and highways of this state during the period of the life of the license.

(3) The registration receipt shall not constitute evidence of ownership but shall be used only for registration purposes. No Montana certificate of ownership shall be issued for this type of registration.

(4) This section is not applicable to any vehicle covered by a valid and existing reciprocal agreement or declaration entered into under the provisions of the laws of Montana.

History: En. Sec. 7, Ch. 121, L. 1929; amd. Sec. 7, Ch. 126, L. 1933; re-en. Sec. 1760.7, R.C.M. 1935; amd. Sec. 1, Ch. 93, L. 1939; amd. Sec. 1, Ch. 296, L. 1947; amd. Sec. 3, Ch. 195, L. 1953; amd. Sec. 1, Ch. 143, L. 1955; amd. Sec. 26, Ch. 206, L. 1963; amd. Sec. 2, Ch. 290, L. 1967; R.C.M. 1947, 53-129; amd. Sec. 46, Ch. 421, L. 1979; amd. Sec. 35, Ch. 614, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "if appropriate" after "the payment of property taxes" near the end of (1); inserted "or the payment of the light vehicle license fee as provided by 61-3-532" after "15-8-203 or 15-24-301" near the end of (1); substituted "Owner's Certificate of Registration and Payment Receipt" for "Owner's Certificate of Registration and Tax Receipt" in the first sentence of (2).

Effective Date: Section 66, Ch. 614, L. 1981, provided: "(1) Except as provided in subsection (2), this act is effective on January 1, 1982.

(2) Section 5 [61-3-535] is effective on passage and approval." Approved May 7, 1981.

61-3-702. Foreign vehicles to display number plates. All foreign registered and licensed motor vehicles shall also carry in plain sight thereon the license plates or device from such other state or foreign country.

History: En. Sec. 8, Ch. 121, L. 1929; amd. Sec. 8, Ch. 126, L. 1933; re-en. Sec. 1760.8, R.C.M. 1935; R.C.M. 1947, 53-130.

61-3-703. Purpose. Sections 61-3-701 and 61-3-702 shall be solely for the purpose of taxation, registration, and identification of vehicles operated in this state that have paid a license in another state or foreign country, and otherwise than as herein specifically set forth shall not be construed as a repeal of any laws or parts of laws having to do with the registration or licensing of automobiles within the state.

History: En. Sec. 10, Ch. 121, L. 1929; amd. Sec. 9, Ch. 126, L. 1933; re-en. Sec. 1760.9, R.C.M. 1935; R.C.M. 1947, 53-131; amd. Sec. 4, Ch. 598, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "taxation" after "for the purpose of" near the beginning of the section.

61-3-704. Penalty. Any person operating a vehicle in violation of the intent and purpose of 61-3-701 or 61-3-702 shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $10 or more than $50 or confined in the county jail for not more than 30 days or both such fine and imprisonment.

History: En. Sec. 11, Ch. 121, L. 1929; amd. Sec. 10, Ch. 126, L. 1933; re-en. Sec. 1760.10, R.C.M. 1935; R.C.M. 1947, 53-132.

61-3-705 and 61-3-706 reserved.

61-3-707. Foreign vehicles used for transportation in connection with employment. (1) Before a motor vehicle taxed pursuant to 15-24-301(4) may be operated in Montana for a calendar quarter, the person responsible for payment of taxes must apply for and obtain a window decal.

(2) Decals must be color-coded to distinguish the four quarterly registration periods of the year.

(3) An applicant may purchase a decal for more than one registration quarter at a time by paying the appropriate amount.

(4) There is a $2 fee for each decal, and money collected from this fee shall be deposited to the county general fund. The $2 fee is in addition to the tax.

(5) A current window decal must be displayed on the lower right-hand corner of the windshield.

History: En. Sec. 3, Ch. 598, L. 1981.

Compiler's Comments

1981 Title: The title to HB 389 (Ch. 598, L. 1981) read: "An act providing for annual or quarterly registration of motor vehicles owned by nonresidents temporarily employed in Montana; subjecting certain of these vehicles to taxation; and establishing window decals as the form of license evidencing quarterly registration."

Codification Instruction: Section 5, Ch. 598, L. 1981, provided: "Section 3 is intended to be codified as an integral part of Title 61, chapter 3, part 7, and the provisions of Title 61, chapter 3, part 7, apply to section 3."

61-3-708 through 61-3-710 reserved.

61-3-711. Declaration of policy. It is the policy of this state to promote and encourage the fullest possible use of its highway system by authorizing the making and execution of motor vehicle reciprocal or proportional registration agreements, arrangements, and declarations with other states, provinces, territories, and countries with respect to vehicles registered in this and such other states, provinces, territories, and countries thus contributing to the economic and social development and growth of this state.

History: En. Sec. 1, Ch. 206, L. 1963; R.C.M. 1947, 53-701.

61-3-712. Definitions. As used in 61-3-711 through 61-3-733 the following definitions apply:

(1) "Apportionable vehicle" means a vehicle which is used or intended for use in more than one jurisdiction and used for the transportation of persons for hire, compensation, or profit, or designed or used primarily for the transportation of property.

(2) "Fleet" means one or more apportionable vehicles.

(3) "Jurisdiction" means and includes a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a foreign country, and a state or province of a foreign country.

(4) "Legal residence" means a jurisdiction where the person lives or conducts his business. This residence need not be coupled with the intent to live or conduct the business there on a permanent basis. The use of the word "residence" in 61-3-711 through 61-3-733 shall be confined to the definition given, and shall not be confused with the word "domicile". This definition of "residence" further recognizes that a person may have several residences, but only one domicile.

(5) "Preceding year" means a period of 12 consecutive months fixed by the department of highways, which period shall be within 16 months immediately preceding the commencement of the registration or license year for which proportional registration is sought. The department in fixing the period shall make it conform to the terms, conditions, and requirements of any applicable agreement or arrangements for the proportional registration of vehicles.

(6) (a) "Properly registered", as applied to place of registration, means:

(i) the jurisdiction where the person registering the vehicle has his legal residence;

(ii) in the case of an apportionable vehicle, the jurisdiction in which it is registered if the enterprise in which the vehicle is used has a place of business therein and if the vehicle is most frequently dispatched, garaged, serviced, maintained, operated, or otherwise controlled in or from the place of business and the vehicle has been assigned to the place of business; or

(iii) in the case of an apportionable vehicle, the jurisdiction where because of an agreement or arrangement between two or more jurisdictions or pursuant to a declaration the vehicle has been registered as required by that jurisdiction.

(b) In case of doubt or dispute as to the proper place of registration of a vehicle, the highway commission shall make the final determination, but in making the determination, the commission may confer with departments of the other jurisdictions affected.

History: **En. Sec. 2, Ch. 206, L. 1963; amd. Sec. 190, Ch. 316, L. 1974; R.C.M. 1947, 53-702(1), (2), (4) thru (6), (10); amd. Sec. 1, Ch. 36, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "Apportionable" for "Commercial", "used or intended for use" for "operated", and "jurisdiction" for "state" in (1); substituted "one" for "two" in (2) and "apportionable" for "commercial" in (2), (6)(ii), and (6)(iii).

61-3-713. Authority of department of highways. The department of highways may execute or make arrangements, agreements, or declarations to carry out 61-3-711 through 61-3-733.

History: **En. Sec. 4, Ch. 206, L. 1963; amd. Sec. 191, Ch. 316, L. 1974; R.C.M. 1947, 53-704.**

61-3-714. Authority for reciprocity agreements, provisions, reciprocity standards. The department of highways may enter into an agreement or arrangement with the duly authorized representatives of other jurisdictions, granting to vehicles or to owners of vehicles which are properly registered or licensed in those jurisdictions, and for which evidence of compliance is supplied, benefits, privileges, and exemptions from payment, wholly or partially, of any taxes, fees, or other charges imposed upon those vehicles or owners with respect to the operation or ownership of the vehicles under the laws of this state. The agreement or arrangement shall provide that vehicles properly registered or licensed in this state, when operated upon highways of those other jurisdictions, shall receive exemptions, benefits, and privileges of a similar kind or to a similar degree as are extended to vehicles properly registered or licensed in the jurisdiction when operated in this state. The agreement or arrangement shall, in the judgment of the department, be in the best interests and fair and equitable to this state and its citizens determined on the basis and recognition of the benefits which accrue to the economy of this state from the uninterrupted flow of commerce.

History: En. Sec. 5, Ch. 206, L. 1963; amd. Sec. 192, Ch. 316, L. 1974; R.C.M. 1947, 53-705.

61-3-715. Base state registration reciprocity. An agreement or arrangement entered into or a declaration issued under the authority of 61-3-711 through 61-3-733 may contain provisions authorizing the registration or licensing in another jurisdiction of vehicles located in or operated from a base in such other jurisdiction, which vehicles otherwise would be required to be registered or licensed in this state; and in such event the exemptions, benefits, and privileges extended by such agreement, arrangement, or declaration shall apply to such vehicles, when properly licensed or registered in such base jurisdiction.

History: En. Sec. 6, Ch. 206, L. 1963; R.C.M. 1947, 53-706.

61-3-716. Proportional registration of fleet vehicles. If a jurisdiction permits or requires the licensing of fleets of vehicles in interstate or combined interstate and intrastate commerce and payment of registration fees, license fees, taxes, or other fixed fees on those vehicles on an apportionment basis commensurate with and determined by the miles traveled on and the use made of the jurisdiction's highways, as compared with the miles traveled on and the use made of other jurisdiction's highways or any other equitable basis of apportionment, and exempts vehicles registered in any other jurisdiction under this apportionment basis from the requirements of full payment of its own registration, license fees, taxes, or other fixed fees, then the department may, by agreement, adopt such exemption with respect to vehicles of these fleets, whether owned by residents or nonresidents of this state and regardless of where based. An agreement, under the terms, conditions, or restrictions the department considers proper, may provide that owners of vehicles operated in interstate or combined interstate and intrastate commerce in this state be permitted to pay registration, license fees, taxes, or other fixed fees on an apportionment basis, commensurate with and determined by the miles traveled on and the use made of the highways of this state as compared with the use made of the highways of other jurisdictions or any other equitable basis of apportionment. This agreement may not authorize or be construed to authorize a vehicle so registered to be operated in intrastate commerce in this state unless the owner of the vehicle has been granted intrastate authority or rights by the public service commission, if a grant is otherwise required by law. The department of highways may adopt rules it considers necessary to carry out and administer this section, and the registration of fleet vehicles under 61-3-711 through 61-3-733 is subject to the rights, terms, and conditions granted by or contained in any applicable agreement, arrangement, or declaration made by the department.

History: En. Sec. 7, Ch. 206, L. 1963; amd. Sec. 1, Ch. 88, L. 1965; amd. Sec. 193, Ch. 316, L. 1974; R.C.M. 1947, 53-707.

61-3-717. Declarations of extent of reciprocity. In the absence of an agreement or arrangement with another jurisdiction, the department may examine the laws and requirements of the jurisdiction and declare the extent and nature of exemptions, benefits, and privileges to be extended to vehicles properly registered or licensed in the other jurisdiction, or to the owners of the vehicles which are in the judgment of the department in the best interests and fair and equitable to this state and its citizens determined on the basis and recognition of the benefits which accrue to the economy of this state from the uninterrupted flow of commerce.

History: En. Sec. 8, Ch. 206, L. 1963; amd. Sec. 194, Ch. 316, L. 1974; R.C.M. 1947, 53-708.

61-3-718. Extension of reciprocal privileges to lessees authorized. An agreement or arrangement entered into or a declaration issued under the authority of 61-3-711 through 61-3-733 may contain provisions under which a leased vehicle properly registered by the lessor thereof may be entitled, subject to terms and conditions stated therein, to the exemptions, benefits, and privileges extended by such agreement, arrangement, or declaration.

History: En. Sec. 9, Ch. 206, L. 1963; R.C.M. 1947, 53-709.

61-3-719. Automatic reciprocity. On and after March 7, 1963, if no agreement, arrangement, or declaration is in effect with respect to another jurisdiction as authorized by 61-3-711 through 61-3-733, any vehicle properly registered or licensed in such other jurisdiction, and for which evidence of compliance is supplied, shall receive, when operated in this state, the same exemptions, benefits, and privileges granted by such other jurisdictions to vehicles properly registered in this state. Reciprocity extended under this subsection shall apply to commercial vehicles only when engaged exclusively in interstate commerce.

History: En. Sec. 10, Ch. 206, L. 1963; R.C.M. 1947, 53-710.

61-3-720. Proportional registration not exclusive. Nothing contained in 61-3-711 through 61-3-733 relating to proportional registration of fleet vehicles shall be construed as requiring any vehicle to be proportionally registered if it is otherwise registered in this state for the operation in which it is engaged, including but not by way of limitation regular registration, temporary registration, or trip permit or registration.

History: En. Sec. 11, Ch. 206, L. 1963; R.C.M. 1947, 53-711.

61-3-721. Proportional registration of fleet vehicles, application, fee formula, and payment. (1) An owner engaged in operating one or more fleets may, instead of registration of vehicles under other sections of this title, register and license each fleet for operation in this state by filing an application with the department which shall contain the following information and any other information pertinent to vehicle registration the department requires:

(a) total fleet miles which is the total number of miles operated in all jurisdictions during the preceding year by the vehicles in the fleet during the year;

(b) in-state miles which is the total number of miles operated in this state during the preceding year by the vehicles in the fleet during the year; and

(c) a description and identification of each vehicle of the fleet which is to be operated in this state during the registration year for which proportional fleet registration is requested.

(2) The application for each fleet may be accompanied by a fee payment computed as follows:

(a) divide in-state miles by total fleet miles;

(b) determine the total amount necessary to register each vehicle in the fleet for which registration is requested, based on the regular annual registration fees prescribed by 61-3-321 and part 2 of chapter 10, and the property taxes which are due on the fleet;

(c) multiply the sum obtained under subsection (2)(b) by the fraction obtained under subsection (2)(a).

(3) Applications submitted with fees may be recomputed by the department and a statement furnished showing the overpayment or balance due.

(4) Applications submitted without fees shall be computed by the department and a statement furnished showing the amount of fees due.

History: En. Sec. 12, Ch. 206, L. 1963; amd. Sec. 2, Ch. 88, L. 1965; amd. Sec. 195, Ch. 316, L. 1974; amd. Sec. 1, Ch. 144, L. 1977; R.C.M. 1947, 53-712; amd. Sec. 2, Ch. 36, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "may be recomputed" for "shall be recomputed" in (3).

61-3-722. Registration and identification of proportionally registered vehicles — effect of such registration. (1) The department shall register the vehicles so described and issue a license plate or plates, or a distinctive sticker, or other suitable identification device, for each vehicle described in the application upon payment of the appropriate fees and property taxes as provided by law, for the application and for the stickers or devices issued. A fee of $2 shall be paid for each license plate, sticker, or device issued for each proportionally registered vehicle. A registration card shall be issued for each proportionally registered vehicle. The registration card shall, in addition to other information required by chapter 3, bear upon its face the number of the license, sticker, or other device issued for the proportionally registered vehicle and shall be carried in the vehicle at all times.

(2) Fleet vehicles so registered and identified shall be deemed fully licensed and registered in this state for any type of movement or operation, except that, in those instances in which a grant of authority is required for intrastate movement or operation, the vehicle may not be operated in intrastate commerce in this state unless the owner has been granted intrastate authority by the public service commission and unless the vehicle is being operated in conformity with that authority.

History: En. Sec. 13, Ch. 206, L. 1963; amd. Sec. 3, Ch. 88, L. 1965; amd. Sec. 196, Ch. 316, L. 1974; R.C.M. 1947, 53-713.

61-3-723. Proportional registration not applicable in a single jurisdiction. The right to the privilege and benefits of proportional registration of fleet vehicles extended by 61-3-711 through 61-3-733, or by any contract, agreement, arrangement, or declaration made under the authority thereof, shall be subject to the condition that each fleet vehicle proportionally registered under the authority of 61-3-711 through 61-3-733 shall also be proportionally or otherwise properly registered in at least one other jurisdiction during the period for which it is proportionally registered in this state.

History: **En. Sec. 14, Ch. 206, L. 1963; R.C.M. 1947, 53-714.**

61-3-724. Registration of additional fleet vehicles. Vehicles acquired by the owner after the commencement of the registration year and subsequently added to a proportionally registered fleet shall be proportionally registered by applying the mileage percentage used in the original application for such fleet for such registration period to the regular registration fees due with respect to such vehicle for the remainder of the registration year.

History: **En. Sec. 15, Ch. 206, L. 1963; R.C.M. 1947, 53-715.**

61-3-725. Withdrawal of fleet vehicles — procedure, credits, and accounting. If a vehicle is withdrawn from a proportionally registered fleet during the period for which it is registered, the owner of the fleet shall notify the department of highways of that fact on forms prescribed by the department. The department may require the owner to surrender proportional registration cards and other identification devices which have been issued with respect to that vehicle. If a vehicle is permanently withdrawn from a proportionally registered fleet because it has been destroyed, sold, or otherwise completely removed from the service of the registrant, the unused portion of the gross vehicle weight fees paid with respect to that vehicle shall be credited to the proportional registration account of the owner. This unused portion shall equal the amount paid with respect to the vehicle when it was first proportionally registered in the registration year, reduced by one-twelfth of the total annual gross vehicle weight fee of the vehicle for each calendar month and fraction thereof elapsing between the first day of the month of the current year in which the vehicle was registered and the date the notice of withdrawal is received by the department. This credit shall be applied against liability for additional fees due during the registration year or for additional fees due upon audit under 61-3-728. If a credit is less than $5, it may not be made or entered. In no event may the amount be credited against fees other than those for the registration year, nor may any amount be subject to refund.

History: **En. Sec. 16, Ch. 206, L. 1963; amd. Sec. 197, Ch. 316, L. 1974; R.C.M. 1947, 53-716; amd. Sec. 3, Ch. 36, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "additional fees due" for "subsequent additions to be prorated" in the third sentence from the end.

61-3-726. New fleet — estimated mileage. The initial application for proportional registration of a fleet shall state the mileage data with respect to the fleet for the preceding year in this and other jurisdictions. If operations were not conducted with this fleet during the preceding year, the application shall contain a full statement of the proposed method of operation and estimates of annual mileage in this state and other jurisdictions. The department shall determine the in-state and total fleet miles to be used in computing the fee payment for the fleet. The department may evaluate and adjust the estimate in the application if it is not satisfied as to the correctness of the estimate.

History: **En. Sec. 17, Ch. 206, L. 1963; amd. Sec. 198, Ch. 316, L. 1974; R.C.M. 1947, 53-717.**

61-3-727. Fleet registration — denial when no reciprocity. The department may refuse to accept proportional registration applications for the registration of vehicles based in, or owned by residents of, another jurisdiction if the department finds that the other jurisdiction does not grant similar registration privileges to fleet vehicles based in or owned by residents of this state.

History: **En. Sec. 18, Ch. 206, L. 1963; amd. Sec. 199, Ch. 316, L. 1974; R.C.M. 1947, 53-718.**

61-3-728. Preservation of proportional registration records. An owner whose application for proportional registration has been accepted shall preserve the records on which the application is based for a period of 4 years following the year or period upon which the application is based. Upon request of the department, the owner shall make these records available to the department for audit as to accuracy of computations and payments or pay the reasonable costs of an audit at the owner's home office by an appointed representative of the department. The department may make arrangements with agencies of other jurisdictions administering motor vehicle registration laws for joint audits of the owner.

History: **En. Sec. 19, Ch. 206, L. 1963; amd. Sec. 200, Ch. 316, L. 1974; R.C.M. 1947, 53-719.**

61-3-729. Relation to other state laws. The provisions of 61-3-711 through 61-3-733 shall constitute complete authority for the registration of fleet vehicles upon a proportional registration basis without reference to or application of any other statutes of this state except as in this section expressly provided.

History: **En. Sec. 20, Ch. 206, L. 1963; R.C.M. 1947, 53-720.**

61-3-730. Suspension of reciprocity benefits. The department may suspend or cancel the exemptions, benefits, or privileges granted under 61-3-711 through 61-3-733 to a person who violates any of the conditions or terms of the agreements, arrangements, or declarations or violates the laws of this state relating to motor vehicles, or rules lawfully adopted thereunder.

History: **En. Sec. 21, Ch. 206, L. 1963; amd. Sec. 201, Ch. 316, L. 1974; R.C.M. 1947, 53-721; amd. Sec. 4, Ch. 36, L. 1981.**

Compiler's Comments

1981 Amendment: Deleted "Agreements, arrangements, or declarations made under 61-3-711 through 61-3-733 may include provisions authorizing" from beginning of section and rewrote remainder to reflect the deletion.

61-3-731. Agreements to be written, filed, and available for distribution. All agreements, arrangements, or declarations, or amendments thereto, shall be in writing and shall be filed with the department, and the department shall provide copies for public distribution upon request.

History: En. Sec. 22, Ch. 206, L. 1963; amd. Sec. 202, Ch. 316, L. 1974; R.C.M. 1947, 53-722.

61-3-732. Continued validity of existing reciprocity agreements. All reciprocity and proportional registration agreements, arrangements, and declarations relating to vehicles in force and effect as of March 7, 1963, shall continue in force and effect until specifically amended or revoked as provided by law or by such agreements or arrangements.

History: En. Sec. 23, Ch. 206, L. 1963; R.C.M. 1947, 53-723.

61-3-733. Law supplemental to motor vehicle registration law. Sections 61-3-711 through 61-3-732 are supplemental to the motor vehicle registration law of this state.

History: En. Sec. 24, Ch. 206, L. 1963; amd. Sec. 203, Ch. 316, L. 1974; R.C.M. 1947, 53-724.

CHAPTER 4

SALES AND DISTRIBUTION OF MOTOR VEHICLES

Part 1 — Dealers

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61-4-112. Applicability of sticker provisions to new car purchases.
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Part 1

Dealers

61-4-101. Application for dealer's license. (1) Every person, firm, corporation, or association which, for commission or profit, engages in the business of buying, selling, exchanging, or acting as a broker of new motor vehicles, recreational vehicles, used motor vehicles, trailers (except trailers having an unloaded weight of less than 500 pounds), semitrailers, or special mobile equipment as defined in 61-1-104 shall file, by mail or otherwise, in the office of the division a verified application for licensure as a dealer, on a blank to be furnished by the division for that purpose and containing the information required. The application and all of the information contained in it shall be verified by the Montana highway patrol. Each application must be accompanied by the license fee hereinafter specified. A dealer's license must be renewed and paid for annually, and an application for relicensure must be filed not later than January 1 of each year. If an application for renewal of a license has been received by the division prior to the expiration of the license, the dealer may operate his business and display dealer plates under the expired license between January 1 and February 15 following expiration.

(2) To qualify for licensure and the issuance and use of "D", "UD", "RV", "DTR", or "MCD" plates as hereinafter provided, the applicant must furnish the following information and qualify under the following provisions:

(a) To qualify as a new motor vehicle dealer and for the use of "D" plates, the applicant must:

(i) state the name under which the business is to be conducted and the location of the premises (street address, city, county, and state) where records are kept, sales are made, and stock of motor vehicles is displayed;

(ii) state the name and address of all owners or persons having an interest in the business, provided that in the case of a corporation, the names and addresses of the president and secretary are sufficient;

(iii) state the name and make of all motor vehicles handled and the name and address of the manufacturer, importer, or distributor with whom the applicant has a written new motor vehicle franchise or sales agreement;

(iv) execute a certificate to the effect that the applicant has a permanent building for the display and sale of new motor vehicles at the location of the premises where sales are conducted;

(v) execute a certificate to the effect that the applicant has a bona fide service department for the repair, service, and maintenance of motor vehicles; and

(vi) execute a certificate to the effect that the applicant is a bona fide dealer in new motor vehicles and that he is recognized by a manufacturer, importer, or distributor as a dealer in new motor vehicles.

(b) To qualify as a used motor vehicle dealer and for the use of "UD" plates or as a recreational vehicle, trailer, semitrailer, or special mobile equipment dealer and for the use of "DTR" plates or as a motorcycle dealer and for the use of "MCD" plates, the applicant must, in addition to the matters set forth in subsections (i) and (ii) of subsection (2)(a) above, provide:

(i) a statement that the applicant has a building or lot and a sign readable at a minimum distance of 150 feet and indicating the firm name and headquarters as the principal place of business; and

(ii) a certificate to the effect that the applicant is a bona fide dealer in used motor vehicles, recreational vehicles, trailers, semitrailers, special mobile equipment, or motorcycles. An applicant for a recreational vehicle dealer license must also indicate on the same certificate that he is recognized by a manufacturer, importer, or distributor as a dealer in recreational vehicles.

(c) To qualify for a used motor vehicle dealer's license, a person must submit an annual application for that license and comply with the provisions of 61-4-102(5) in addition to fulfilling the requirements of subsection (2)(b) above.

(d) The provisions of subsection (2)(c) above do not apply to an applicant who is licensed as a motor vehicle wrecking facility under the provisions of Title 75, chapter 10, part 5.

(3) The applicant for a dealer's license shall also file with his application a good and sufficient bond in the sum of $5,000, and the bond shall be conditioned that the applicant shall conduct his business in accordance with the requirements of the law. All bonds shall run to the state of Montana and shall be approved by the division and filed in its office and shall be renewed annually.

History: En. Subd. 5, Sec. 1, Ch. 158, L. 1933; re-en. Sec. 1759.4, R.C.M. 1935; amd. Sec. 2, Ch. 72, L. 1937; amd. Sec. 2, Ch. 245, L. 1955; amd. Sec. 3, Ch. 256, L. 1965; amd. Sec. 1, Ch. 354, L. 1969; amd. Sec. 2, Ch. 226, L. 1971; amd. Sec. 2, Ch. 244, L. 1971; amd. Sec. 1, Ch. 535, L. 1977; R.C.M. 1947, 53-118(part); amd. Sec. 1, Ch. 73, L. 1979; amd. Sec. 47, Ch. 421, L. 1979; amd. Sec. 2, Ch. 443, L. 1981.

Compiler's Comments

1981 Amendment: Added "recreational vehicles" to the list of vehicles near the beginning of subsection (1), near the beginning of subsection (2)(b), and in the middle of subsection (2)(b)(ii); added "RV" to the list of plate types near the beginning of subsection (2); and added the last sentence to subsection (2)(b)(iii).

Cross-References

Recreational vehicle defined, 61-1-132.

61-4-102. Fees. (1) Upon making such application, the applicant shall pay to the division, in addition to the fees required of dealers under the provisions of subsection (2), a fee of $5. Upon receipt of the application, fee, and bond, as provided above, the division shall examine the application, and may, prior to issuing a license, make individual investigation of the truth of the statements contained in the application. If the division is satisfied that the applicant qualifies for the issuance of a dealer's license under the provisions of this chapter, it may thereupon issue the same.

(2) Registration or license fees shall be paid upon registration or reregistration of dealers in motor vehicles, recreational vehicles, or trailers as follows:

(a) (i) all dealers in motor vehicles and recreational vehicles, a fee of $25, which shall entitle such dealer to one set of number plates, and $25 additional fee for each additional set of number plates, subject to the following limitations on the number of additional sets allowed a dealer:

(A) 5% of the first 100 vehicle sales for the previous year; plus

(B) 3% of the next 100 vehicle sales for the previous year; plus

(C) 2% of vehicle sales in excess of 200 for the previous year; and

(D) any additional sets upon a showing of good cause by the applicant dealer to the division.

(ii) in addition to the dealer plates allowed under subsection (2)(a)(i), a dealer who has purchased one or more sets of dealer plates is entitled to purchase demonstrator plates at a cost determined by the division to offset the cost of production. Demonstrator plates shall be used in lieu of a dealer plate but only as set forth in subsection (6) and must be distinguished from dealer plates in a manner determined by the division.

(b) dealers in motorcycles and trailers, including housetrailers, $45.

(3) If any dealer is originally registered 6 months after the time of registration as set by law, the registration or license fee for the remainder of such year shall be one-half of the regular fee above given.

(4) A dealer in motor vehicles, recreational vehicles, or trailers who shall maintain more than one place of business or who shall maintain any branch establishment or establishments must register and pay a registration or license fee for each such place of business or establishment.

(5) A new applicant for a used motor vehicle dealer license shall pay $300 to the division in addition to any other sums required by this section or other provisions of the law. An applicant for a renewal of a used motor vehicle dealer license shall certify under oath that he has sold more than five used motor vehicles during the preceding calendar year or pay an additional $300 before he may be licensed.

(6) Demonstrator plates provided for in subsection (2)(a)(ii) may be used only as follows:

(a) New and used motor vehicle or recreational vehicle demonstrator plates may be used:

(i) to demonstrate, for no more than 72 hours, an authorized vehicle held for sale, when operated by an individual holding a valid operator's license;

(ii) on authorized vehicles owned by the firm when operated by an officer or bona fide full-time employee of the dealer and used to transport the dealer's own tools, parts, and equipment;

(iii) on authorized vehicles being tested for repair;

(iv) on authorized vehicles being moved to or from a dealer's place of business for sale;

(v) on authorized vehicles being moved to or from service and repair facilities before sale;

(vi) on authorized vehicles being moved to or from exhibitions within the state, provided any such exhibition does not exceed a period of 20 days.

(b) Mobile home and trailer dealer demonstrator plates may be used:

(i) on units hauled to or from the place of business of the manufacturer and the place of business of the dealer or to and from places of business of the dealer;

(ii) on mobile homes hauled to a customer's location for setup after sale;

(iii) on travel trailers held for sale to demonstrate the towing capability of the vehicle provided that a dated demonstration permit, valid for not more than 72 hours, is carried with the vehicle at all times;

(iv) on any motor vehicle owned by the dealer that is used only to move vehicles legally bearing mobile home and travel trailer dealer license plates of the dealer owning any such motor vehicle;

(v) on vehicles being moved to or from vehicle exhibitions within the state, provided any such exhibition does not exceed a period of 20 days.

History: Ap. p. Subd. 5, Sec. 1, Ch. 158, L. 1933; re-en. Sec. 1759.4, R.C.M. 1935; amd. Sec. 2, Ch. 72, L. 1937; amd. Sec. 2, Ch. 245, L. 1955; amd. Sec. 3, Ch. 256, L. 1965; amd. Sec. 1, Ch. 354, L. 1969; amd. Sec. 2, Ch. 226, L. 1971; amd. Sec. 2, Ch. 244, L. 1971; amd. Sec. 1, Ch. 535, L. 1977; Sec. 53-118, R.C.M. 1947; Ap. p. Sec. 6, Ch. 75, L. 1917; amd. Sec. 2, Ch. 207, L. 1919; amd. Sec. 1, Ch. 199, L. 1921; re-en. Sec. 1760, R.C.M. 1921; amd. Sec. 1, Ch. 107, L. 1923; amd. Sec. 1, Ch. 88, L. 1927; amd. Sec. 1, Ch. 182, L. 1929; amd. Sec. 1, Ch. 103, L. 1933; amd. Sec.1, Ch. 38, Ex. L. 1933; re-en. Sec. 1760, R.C.M. 1935; amd. Sec. 1, Ch. 138, L. 1937; amd. Sec. 1, Ch. 125, L. 1939; amd. Sec. 2, Ch. 154, L. 1943; amd. Sec. 2, Ch. 200, L. 1945; amd. Sec. 1, Ch. 201, L. 1945; amd. Sec. 1, Ch. 221, L. 1951; amd. Sec. 1, Ch. 215, L. 1953; amd. Sec. 1, Ch. 41, L. 1955; amd. Sec. 228, Ch. 147, L. 1963; amd. Sec. 1, Ch. 178, L. 1963; amd. Sec. 30, Ch. 121, L. 1965; amd. Sec. 12-105, Ch. 197, L. 1965; amd. Sec. 4, Ch. 226, L. 1971; amd. Sec. 2, Ch. 243, L. 1977; Sec. 53-122, R.C.M. 1947; R.C.M. 1947, 53-118(part), 53-122(part); amd. Sec. 1, Ch. 228, L. 1979; amd. Sec. 3, Ch. 443, L. 1981.

Compiler's Comments

1981 Amendment: Added "recreational vehicle" to the list of vehicles near the beginning of subsection (2), near the beginning of subsection (2)(a)(i), and near the beginning of subsection (4); reduced from $45 to $25 the fee that all dealers must pay; reduced from two to one the number of dealer plates a dealer is entitled to upon payment of the fee, and increased from $5 to $25 the cost of each additional set of plates near the beginning of subsection (2)(a)(i); added the limitations in subsection (2)(a)(i) on the number of additional sets allowed a dealer; added subsection (2)(a)(ii); and added subsection (6).

Cross-References

Recreational vehicle defined, 61-1-132.

61-4-103. Assignment of dealer plates. (1) Upon the licensing of a dealer as a new motor vehicle dealer, used motor vehicle dealer, recreational vehicle dealer, or trailer, semitrailer, or special mobile equipment dealer, or a dealer of the motorcycle-type vehicle, the division shall assign to such dealer a distinctive serial license number as a dealer and after payment of fees furnish every qualified dealer in motor vehicles with such sets of number plates as required according to need, which need shall be justified by the dealer with the initial application for license and each renewal. Assigned number plates shall be similar to number plates furnished to owners of motor vehicles but shall bear thereon, in addition to the serial number assigned such dealer, the letter "D" if the dealer is authorized to sell new motor vehicles (including trucks and truck trailers); the letters "RV" if the dealer is authorized to sell recreational vehicles; the letters "UD" if the dealer is authorized to sell used motor vehicles (including used trucks and used truck trailers); the letters "DTR" if the dealer is authorized to sell trailers, semitrailers, or special mobile equipment (new or used); and the letters "MCD" if the dealer is authorized to sell vehicles of the motorcycle type (new or used).

(2) With the exception of a dealer authorized to sell new motor vehicles (including trucks and truck trailers) and to use the "D" plate or demonstrator plate, no dealer authorized to transact business under the provisions of this section may offer for sale or trade any vehicle described in this section except such vehicles as are authorized by the plates assigned to him. If an applicant wishes to sell more than one type of vehicle, he shall make application for each separate authorization. No plate assigned to a dealer may be used on any vehicle other than the type described in this section. A dealer authorized to sell new motor vehicles and assigned a "D" plate or demonstrator plate is authorized to sell both new and used motor vehicles (including trucks and truck trailers), and such plates may be displayed on either new or used motor vehicles by a licensed dealer in new vehicles.

(3) The division shall cause to be placed on each set of license plates issued to a dealer a serial number assigned to each dealer and the actual number of license plates issued to each dealer. The number of the dealer shall follow the prefix of the county, and the number of plates issued the dealer shall follow the prefix of the county and the number of the dealer, the dealer's number to be separated from the county prefix by a dash, and the number of plates issued to a dealer to be separated from the dealer's number by a dash, as follows: dealer number 4 in Lewis and Clark County would be numbered 5-4, and if the dealer were issued three sets of plates, they would be numbered consecutively as follows, 5-4-1, 5-4-2, and 5-4-3.

(4) Dealers properly licensed under this section are authorized to use and display dealer's license plates on any motor vehicle held for bona fide sale or used in the conduct of the dealer's business in selling or demonstrating motor vehicles and operated by or under the control of the dealer, his officers or employees. For purposes of this provision, "officers and employees" include only such persons listed on the manufacturer's franchise agreement or the importer's distribution agreement and their spouses or such other persons upon whom the dealer has paid social security taxes as a full-time employee. No dealer's license plate shall be used or displayed on vehicles normally used for hire, lease, or rental or for purposes not incident to the business of a motor vehicle dealer. Each dealer is accountable for each plate issued and shall certify quarterly to the division the disposition of each dealer plate assigned to the dealer, including the name, address, and occupation of the person primarily using each plate.

(5) If it shall appear to the satisfaction of the division, from information furnished to it by the sheriff or any other law enforcement officer, that any such dealer has been improperly licensed, has used the dealer's license in a manner other than the one herein authorized, or is not qualified as a dealer under the requirements of this section, the division may revoke such dealer's

license. No person, firm, corporation, or association shall, for commission or profit, engage in the business of buying, selling, exchanging, or acting as a broker of new motor vehicles, trailers, or semitrailers unless duly licensed in compliance with this section (except trailers having an unladen weight of less than 500 pounds).

History: En. Subd. 5, Sec. 1, Ch. 158, L. 1933; re-en. Sec. 1759.4, R.C.M. 1935; amd. Sec. 2, Ch. 72, L. 1937; amd. Sec. 2, Ch. 245, L. 1955; amd. Sec. 3, Ch. 256, L. 1965; amd. Sec. 1, Ch. 354, L. 1969; amd. Sec. 2, Ch. 226, L. 1971; amd. Sec. 2, Ch. 244, L. 1971; amd. Sec. 1, Ch. 535, L. 1977; R.C.M. 1947, 53-118(part); amd. Sec. 4, Ch. 443, L. 1981.

Compiler's Comments

1981 Amendment: Added "recreational vehicle dealer" to the list of dealers near the beginning of subsection (1); substituted "such sets of number plates as required according to need" for "not less than two sets of number plates, and as many more as required according to need", near the middle of subsection (1); added "the letters "RV" if the deal is authorized to sell recreational vehicles" to the list of dealers and the corresponding identification letters in the middle of the second sentence of subsection (1); inserted "or demonstrator plate" after ""D" plate" in the middle of the first sentence of subsection (2) and near the beginning of the third sentence of subsection (2); substituted "such plates" for ""D" plates" near the end of subsection (2); added "and operated by or under the control of the dealer, his officers or employees." at the end of the first sentence of subsection (4); and inserted the second sentence of subsection (4) which defines "officers or employees".

Cross-References

Recreational vehicle defined, 61-1-132.

61-4-104. Record of purchase or sale. Every dealer licensed under 61-4-101 shall keep a book or record of the purchases, sales or exchanges, or receipts for the purpose of sale of used vehicles and a description of such vehicles, together with the name and address of the seller, of the purchaser, and of the alleged owner or other person from whom each vehicle was purchased or received or to whom it was sold or delivered, as the case may be. The description in the case of motor vehicles shall also include the engine number, if any, maker's number, if any, chassis number, if any, and such other numbers or identification marks as appear thereon and shall include a statement that a number has been obliterated, defaced, or changed if such is the fact. In the case of a trailer, semitrailer, or special mobile equipment, the record shall include the manufacturer's number and such other numbers or identification marks as appear thereon. The dealer shall also have in his possession a duly assigned certificate of ownership from the owner of the motor vehicle from the time the motor vehicle is delivered to him until it has been disposed of by him.

History: En. Subd. 5, Sec. 1, Ch. 158, L. 1933; re-en. Sec. 1759.4, R.C.M. 1935; amd. Sec. 2, Ch. 72, L. 1937; amd. Sec. 2, Ch. 245, L. 1955; amd. Sec. 3, Ch. 256, L. 1965; amd. Sec. 1, Ch. 354, L. 1969; amd. Sec. 2, Ch. 226, L. 1971; amd. Sec. 2, Ch. 244, L. 1971; amd. Sec. 1, Ch. 535, L. 1977; R.C.M. 1947, 53-118(4); amd. Sec. 48, Ch. 421, L. 1979.

61-4-105. Penalty. Any person violating the provisions of 61-4-101 through 61-4-104 shall be guilty of a misdemeanor and subject to a fine of not less than $250 and not more than $500. For the purposes hereof, every sale of a motor vehicle in violation of the provisions of 61-4-101 through 61-4-104 shall be deemed a separate offense.

History: En. Subd. 5, Sec. 1, Ch. 158, L. 1933; re-en. Sec. 1759.4, R.C.M. 1935; amd. Sec. 2, Ch. 72, L. 1937; amd. Sec. 2, Ch. 245, L. 1955; amd. Sec. 3, Ch. 256, L. 1965; amd. Sec. 1, Ch. 354, L. 1969; amd. Sec. 2, Ch. 226, L. 1971; amd. Sec. 2, Ch. 244, L. 1971; amd. Sec. 1, Ch. 535, L. 1977; R.C.M. 1947, 53-118(part).

61-4-106. Transfer of license. A registered dealer, who may sell or dispose of his entire business to any other person, may have his certificate of registration transferred to such purchaser upon filing with the division a statement containing the name of the registered dealer, the number under which such dealer is registered, the name of the purchaser, and the location of the place of business so sold. Upon the filing of such statement, accompanied by a filing fee of $2, the division shall note upon the registration record of such dealer the change of ownership. But no certificate of registration can be transferred unless the entire business of the dealer holding such certificate of registration be sold and disposed of, and no such certificate of registration can be transferred to any person other than the purchasers of such business.

History: En. Sec. 6, Ch. 75, L. 1917; amd. Sec. 2, Ch. 207, L. 1919; amd. Sec. 1, Ch. 199, L. 1921; re-en. Sec. 1760, R.C.M. 1921; amd. Sec. 1, Ch. 107, L. 1923; amd. Sec. 1, Ch. 88, L. 1927; amd. Sec. 1, Ch. 182, L. 1929; amd. Sec. 1, Ch. 103, L. 1933; amd. Sec. 1, Ch. 38, Ex. L. 1933; re-en. Sec. 1760, R.C.M. 1935; amd. Sec. 1, Ch. 138, L. 1937; amd. Sec. 1, Ch. 125, L. 1939; amd. Sec. 2, Ch. 154, L. 1943; amd. Sec. 2, Ch. 200, L. 1945; amd. Sec. 1, Ch. 201, L. 1945; amd. Sec. 1, Ch. 221, L. 1951; amd. Sec. 1, Ch. 215, L. 1953; amd. Sec. 1, Ch. 41, L. 1955; amd. Sec. 228, Ch. 147, L. 1963; amd. Sec. 1, Ch. 178, L. 1963; amd. Sec. 30, Ch. 121, L. 1965; amd. Sec. 12-105, Ch. 197, L. 1965; amd. Sec. 4, Ch. 226, L. 1971; amd. Sec. 2, Ch. 243, L. 1977; R.C.M. 1947, 53-122(part).

61-4-107 through 61-4-110 reserved.

61-4-111. Used motor vehicles — transfer to and from dealers. (1) The provisions of 61-3-201(2) shall not apply in the event of the transfer of a motor vehicle to a duly licensed automobile dealer intending to resell such vehicle and who operates the same only for demonstration purposes. In such cases, the dealer shall not be required to make application for a new certificate of ownership or for registration during the period of his ownership of said vehicle, but upon his transfer of ownership thereof to a person other than a licensed motor vehicle dealer, the following acts shall be required of the dealer on or before the times herein set forth:

(a) Prior to his delivery of the vehicle to the purchaser, the dealer shall issue and affix to the rear window of said vehicle a sticker in form to be prescribed by the division and containing the name and address of the purchaser, date of sale, name and address of the dealer, and a description of the vehicle, including its serial number. There shall be imprinted upon said sticker in bold letters the following statement: "IT IS UNLAWFUL TO PLACE LICENSE PLATES UPON THIS VEHICLE UNTIL REGISTERED AT THE OFFICE OF THE COUNTY TREASURER". One copy of said sticker shall be delivered by the dealer to the county treasurer in the manner prescribed in subsection (1)(b) hereof, and a copy shall be retained by the dealer for his file. It is unlawful for the dealer to issue more than one sticker per vehicle sale.

(b) Within 4 working days following the date of delivery of said vehicle, the dealer shall forward to the county treasurer of the county where the purchaser resides the certificate of ownership and certificate of registration (if the same are then in his possession), with an application for registration executed by the new owner in accordance with the provisions of 61-3-322, and a copy of the sticker affixed to said vehicle by the dealer, and the division, upon receipt of said documents from the county treasurer, together with the conditional sales contract or other lien, if any, shall issue a new certificate of ownership and certificate of registration together with a statement of any conditional sales contract, mortgage, or other lien as provided in 61-3-202. Transmission of said documents by the dealer to the county treasurer may be accomplished either by personal delivery or by first class mail, in which event they shall be deemed to have been delivered at the time of mailing.

(c) If the dealer is unable to forward the certificate of ownership and/or certificate of registration within the time set forth in subsection (1)(b) hereof, because the same are lost, are in the possession of third parties, or are in process of reissuance in this state or elsewhere, he shall comply in all other respects with the provisions of subsection(1)(b) and shall forward the missing document or documents to the county treasurer, either personally or by first class mail, within 3 days after their receipt.

(2) Upon compliance by the dealer with the requirements set forth in this section, title to said motor vehicle shall be deemed to have passed to the purchaser as of the date of the delivery of said vehicle to him by the dealer, and the dealer shall have no further liability or responsibility with respect to the processing of registration.

History: En. Sec. 3, Ch. 138, L. 1971; amd. Sec 2, Ch. 399, L. 1977; R.C.M. 1947, 53-109.1; amd. Sec. 1, Ch. 118, L. 1981.

Compiler's Comments

1981 Amendment: Added the last sentence in (1)(a).

61-4-112. Applicability of sticker provisions to new car purchases. The provisions of subsection (1)(a) of 61-4-111, pertaining to the issuance of a sticker by the dealer, placement thereof upon the rear windshield of the vehicle prior to delivery, and transmission of a copy of said sticker to the county treasurer, either personally or by first class mail within 10 days following delivery of said vehicle, shall be applicable to sales of new motor vehicles as well as to sales of used motor vehicles.

History: En. Sec. 4, Ch. 138, L. 1971; R.C.M. 1947, 53-109.2.

61-4-113. New motor vehicles towed into state to be labeled. (1) Any firm, person, corporation, or association or any of their employees offering for sale or carrying on the business of selling new motor vehicles in the state of Montana shall be required to prominently label any motor vehicle which has been driven under its own power, pushed, towed, or propelled by any other means to sufficiently identify it from other new vehicles that have not been driven, pushed, or towed and shall be required to furnish the purchaser of any such motor vehicle with a certificate, on a printed form to be furnished by the division upon request by such dealers, showing the actual number of miles the motor vehicle has been driven under its own power and the number of miles the vehicle has been pushed, towed, or otherwise propelled upon its own wheels. Any firm, person, corporation, or association or any of their employees who fails to prominently label and issue the certificate or who knowingly issue a certificate that is untrue and calculated to mislead the purchaser is guilty of a misdemeanor.

(2) The provisions of this section do not apply to motor vehicles during the period of time that such motor vehicles are used for bona fide demonstrating purposes.

History: En. Secs. 1, 2, Ch. 26, L. 1937; R.C.M. 1947, 53-301, 53-302; amd. Sec. 49, Ch. 421, L. 1979.

61-4-114 through 61-4-118. Repealed. Sec. 6, Ch. 39, L. 1981.

Compiler's Comments

Histories of Repealed Sections:

61-4-114. (1)En. Sec. 1, Ch. 209, L. 1971; Sec. 53-118.6, R.C.M. 1947; amd. and redes.

32-3315.1 by Sec. 168, Ch. 316, L. 1974; Sec. 32-3315.1, R.C.M. 1947; (2)En. Sec. 12, Ch. 219, L. 1951; amd. Sec. 1, Ch. 262, L. 1967; amd. Sec. 1, Ch. 46, L. 1973; Sec. 53-626, R.C.M. 1947; amd. and redes. 32-3319 by Sec. 183, Ch. 316, L. 1974; Sec. 32-3319, R.C.M. 1947; R.C.M. 1947, 32-3315.1, 32-3319(part); amd. Sec. 50, Ch. 421, L. 1979.

61-4-115. Ap. p. Sec. 2, Ch. 209, L. 1971; Sec. 53-118.7, R.C.M. 1947; amd. and redes. 32-3315.2 by Sec. 169, Ch. 316, L. 1974; Sec. 32-3315.2, R.C.M. 1947; Ap. p. Sec. 13, Ch. 219, L. 1951; Sec. 53-627, R.C.M. 1947; amd. and redes. 32-3320 by Sec. 184, Ch. 316, L. 1974; Sec. 32-3320, R.C.M. 1947; R.C.M. 1947, 32-3315.2, 32-3320(part).

61-4-116. En. Sec. 3, Ch. 209, L. 1971; Sec. 53-118.8, R.C.M. 1947; amd. and redes. 32-3315.3 by Sec. 170, Ch. 316, L. 1974; R.C.M. 1947, 32-3315.3.

61-4-117. En. Sec. 4, Ch. 209, L. 1971; Sec. 53-118.9, R.C.M. 1947; amd. and redes. 32-3315.4 by Sec. 171, Ch. 316, L. 1974; R.C.M. 1947, 32-3315.4.

61-4-118. En. Sec. 5, Ch. 209, L. 1971; Sec. 53-118.10, R.C.M. 1947; amd. and redes. 32-3315.5 by Sec. 172, Ch. 316, L. 1974; R.C.M. 1947, 32-3315.5.

61-4-119. Penalty. Any person violating the provisions of 61-4-111 or 61-4-112 is guilty of a misdemeanor and subject to a fine of not less than $25 and not more than $100. Every violation of 61-4-111 and 61-4-112 is considered a separate offense.

History: En. Sec. 2, Ch. 118, L. 1981.

61-4-120 through 61-4-130 reserved.

61-4-131. Definitions. As used in 61-4-131 through 61-4-137, the following definitions apply:

(1) "Department" means the department of commerce.

(2) "Designated family member" means the spouse, child, grandchild, parent, brother, or sister of a dealer who, in the case of a deceased dealer, is entitled to inherit the dealer's ownership interest in the dealership under the terms of the dealer's will, or who has otherwise been designated in writing by a deceased dealer to succeed him in the motor vehicle dealership, or under the laws of intestate succession of this state or who, in the case of an incapacitated dealer, has been appointed by a court as the legal representative of the dealer's property. The term includes the appointed and qualified personal representative and the testamentary trustee of a deceased dealer.

History: En. 51-609 by Sec. 1, Ch. 381, L. 1977; R.C.M. 1947, 51-609(1), (3); amd. Sec. 2, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of business regulation" in (1).

61-4-132. Right of designated family member to succeed in dealership ownership. (1) Any designated family member of a deceased or incapacitated dealer may succeed the dealer in the ownership or operation of the dealership under the existing franchise or distribution agreement provided he gives the manufacturer, factory branch, distributor, or importer of new motor vehicles written notice of his intention to do so within 120 days of the dealer's death or incapacity and unless there exists good cause for refusal to honor such succession on the part of the manufacturer, factory branch, distributor, or importer.

(2) The manufacturer, factory branch, distributor, or importer may request, and the designated family member shall provide, upon request, personal and financial data that is reasonably necessary to determine whether the succession should be honored.

History: **En. 51-610 by Sec. 2, Ch. 381, L. 1977; R.C.M. 1947, 51-610.**

61-4-133. Refusal to honor succession to ownership — notice required. (1) If a manufacturer, factory branch, distributor, or importer believes that good cause exists for refusing to honor the succession to the ownership and operation of a dealership by a family member of a deceased or incapacitated dealer under the existing franchise agreement, the manufacturer, factory branch, distributor, or importer may, within 30 days of receipt of notice of the designated family member's intent to succeed the dealer in the ownership and operation of the dealership, serve upon the designated family member and the department notice of its refusal to honor the succession and of its intent to discontinue the existing franchise agreement with the dealership no sooner than 60 days from the date such notice is served.

(2) The notice must state the specific grounds for the refusal to honor the succession and of its intent to discontinue the existing franchise agreement with the dealership no sooner than 60 days from the date such notice is served.

(3) If notice of refusal and discontinuance is not timely served upon the family member and the department or if the department rules in favor of the complainant in a hearing held pursuant to 61-4-134, the franchise agreement shall continue in effect subject to termination only as otherwise permitted by law.

History: **En. 51-611 by Sec. 3, Ch. 381, L. 1977; R.C.M. 1947, 51-611.**

61-4-134. Procedure to determine right to succeed. (1) Any designated family member who receives notice of the manufacturer's, factory branch, distributor's, or importer's refusal to honor his succession to the ownership and operation of the dealership may, within the 60-day period, file with the department a verified complaint for a hearing and determination by the department on whether good cause exists for refusal and discontinuance.

(2) The manufacturer, factory branch, distributor, or importer must establish good cause for refusal by showing that the succession would be detrimental to the public interest or to the representation of the manufacturer, factory branch, distributor, or importer.

(3) The franchise agreement shall continue in effect until the final determination of the issues raised in the complaint.

(4) If the manufacturer, factory branch, distributor, or importer prevails, the department shall include in its order approving the termination of the franchise agreement reasonable conditions affording the complainant an opportunity to receive fair and reasonable compensation for the value of the dealership.

(5) Any decision by the department may be reviewed pursuant to part 7, chapter 4, Title 2.

History: **En. 51-612 by Sec. 4, Ch. 381, L. 1977; R.C.M. 1947, 51-612.**

61-4-135. Written designation of succession unaffected. Sections 61-4-131 through 61-4-137 do not preclude a dealer from designating any person as his successor by written instrument filed with the manufacturer, factory branch, distributor, or importer.

History: **En. 51-613 by Sec. 5, Ch. 381, L. 1977; R.C.M. 1947, 51-613.**

61-4-136. Violation — penalty. Any person violating the provisions of 61-4-131 through 61-4-137 shall upon conviction be fined no more than $5,000.

History: **En. 51-614 by Sec. 6, Ch. 381, L. 1977; R.C.M. 1947, 51-614.**

61-4-137. Civil damages. Any dealer suffering pecuniary loss due to a violation of 61-4-131 through 61-4-137, upon prevailing in a civil action therefor, is entitled to damages equal to three times the pecuniary loss together with court costs and reasonable attorneys' fees.

History: **En. 51-615 by Sec. 7, Ch. 381, L. 1977; R.C.M. 1947, 51-615.**

Part 2

Licensing of New Motor Vehicle Manufacturers, Distributors, and Importers

Part Compiler's Comments

Functions Transferred — Name Change: Section 2, Ch. 431, L. 1981, provided: "The functions of the department of business regulation contained in Title 61, chapter 4, part 2, are transferred to the division of motor vehicles. Unless inconsistent with this act, wherever the term "department", meaning department of business regulation, appears in Title 61, chapter 4, part 2, it is changed to "division", meaning division of motor vehicles. The code commissioner is authorized and instructed to change the word "department" to "division" in Title 61, chapter 4, part 2, in accordance with this act."

61-4-201. Definitions. As used in this part, the following definitions apply:

(1) "Community" means the relevant market area of a franchise. For the purposes of this part, the relevant market area of a franchise is the county or counties in which the franchisee is located.

(2) "Distributor" or "wholesaler" means a person who sells or distributes new motor vehicles to new motor vehicle dealers in this state or who maintains distributor representatives in this state.

(3) "Distributor branch" means a branch office maintained or availed of by a distributor or wholesaler for the sale of new motor vehicles to new motor vehicle dealers in this state for directing or supervising its representatives in this state.

(4) "Division" means the division of motor vehicles.

(5) "Factory branch" means a branch office maintained or availed of by a manufacturer for the sale of new motor vehicles to distributors or for the sale of new motor vehicles to new motor vehicle dealers in this state or for directing or supervising its representatives in this state.

(6) "Franchise" means a contract between or among two or more persons when all of the following conditions are included:

(a) a commercial relationship of definite duration or continuing indefinite duration is involved;

(b) the franchisee is granted the right to offer, sell, and service in this state new motor vehicles manufactured or distributed by the franchisor;

(c) the franchisee, as a separate business, constitutes a component of franchisor's distribution system; and

(d) the operation of the franchisee's business is substantially reliant on the franchisor for the continued supply of new motor vehicles, parts, and accessories.

(7) "Franchisee" means a person who receives new motor vehicles from the franchisor under a franchise and who offers, sells, and services such new motor vehicles to and for the general public.

(8) "Franchisor" means a person who manufactures, imports, or distributes new motor vehicles and who may enter into a franchise.

(9) "Importer" means a person who transports or arranges for the transportation of a foreign manufactured new motor vehicle into the United States for sale in this state.

(10) "Manufacturer" means a person who manufactures or assembles new motor vehicles or who manufactures or installs on previously assembled truck chassis special bodies or equipment, which when installed form an integral part of the new motor vehicle and which constitutes a major manufacturing alteration, but does not include a person who installs a camper on a pickup truck.

(11) "New motor vehicle dealer" means a person who buys, sells, exchanges, or offers or attempts to negotiate a sale or exchange or any interest in or who is engaged in the business of selling new motor vehicles or used motor vehicles taken in trade on new motor vehicles.

History: En. 51-601 by Sec. 1, Ch. 380, L. 1977; R.C.M. 1947, 51-601(1) thru (9), (11), (12); amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 1, Ch. 431, L. 1981.

Compiler's Comments

1981 Amendments — Composite: Chapter 274 substituted "department of commerce" for "department of business regulation" in (2).

Chapter 431 deleted former subsection (2) defining department as department of business regulation; inserted subsection (4).

The Ch. 274 amendment does not appear in the composite section, as prepared by the Code Commissioner, because subsection (2) in which it appeared was deleted in its entirety by Ch. 431, such deletion being in the nature of a repealer (see 1-2-204).

61-4-202. License requirements. (1) No new motor vehicle dealer, manufacturer, distributor, factory branch, or distributor branch may engage in business in Montana except in accordance with the requirements of this part. The provisions of this part do not apply to a public officer engaged in the discharge of his official duties or to a trustee, receiver, or other officer acting under the jurisdiction of a court; to financial institutions disposing of repossessed vehicles; or to a person disposing of his personal vehicle. The provisions of this part regulating and licensing new motor vehicle dealers, manufacturers, distributors, factory branches, distributor branches, and franchisors apply only to those new motor vehicle dealers, manufacturers, distributors, factory branches, distributor branches, and franchisors of motor vehicles as defined by this part.

(2) A manufacturer, distributor, factory branch, distributor branch, importer, or franchisor transacting business within Montana by offering, selling, trading, consigning, or otherwise transferring a new motor vehicle to a new motor vehicle dealer must be licensed by the state of Montana. The division shall issue licenses to qualified applicants upon receipt of a license fee in the amount of $15 accompanied by the information required in this section.

(3) The following information, if applicable, shall be submitted by an applicant upon forms supplied by the division:

(a) the name and address of the applicant;

(b) the make and model of each new motor vehicle to be franchised;

(c) the name and address of each of the applicant's franchisees within the state; and

(d) the name and address of each factory branch, distributor branch, agent, or representative within the state.

(4) The license may be renewed each year if the applicant is in compliance with the provisions of this part, remits a renewal fee in the amount of $15, and notifies the division of any changes in the information previously supplied.

(5) No new motor vehicle may be sold in this state unless either the manufacturer on direct dealership of domestic vehicles, the importer of foreign manufactured vehicles on direct dealership, or the distributor on indirect dealerships of either domestic or foreign vehicles is licensed as provided in this part. Notwithstanding any other licensing provision contained in Montana law, every new motor vehicle dealer must obtain a license under part 1 of this chapter. The obtaining of a license under this part or Title 61, chapter 4, part 1 conclusively establishes that a new motor vehicle dealer, manufacturer, distributor, or importer is subject to the laws of this state regulating new motor vehicle dealers, manufacturers, importers, and distributors.

History: En. 51-602 by Sec. 2, Ch. 380, L. 1977; R.C.M. 1947, 51-602; amd. Sec. 1, Ch. 557, L. 1979; amd. Secs. 2, 3, Ch. 431, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "new motor vehicle dealer or a" after "A" at the beginning of (2); substituted "part 1 of this chapter" for "this part" and added "or Title 61, chapter 4, part 1" near the middle of (5) to remove the duplicate licensing of new motor vehicle dealers; substituted "division" for "department" throughout the section; and made minor changes in phraseology.

61-4-203. Administration. The division shall supervise and regulate all persons required by this part to be licensed. In the supervision and regulation thereof the division may:

(1) make investigations it considers necessary;

(2) conduct hearings and compel attendance of witnesses at the hearings pursuant to the Montana Administrative Procedure Act; and

(3) prescribe rules it determines necessary to carry out the provisions of this part.

History: En. 51-603 by Sec. 3, Ch. 380, L. 1977; R.C.M. 1947, 51-603; amd. Sec. 2, Ch. 431, L. 1981.

Compiler's Comments

1981 Amendment: Changed "department" to "division" throughout the section.

61-4-204. Filing agreement — product liability. (1) A franchisee must, at the time he applies for a new motor vehicle dealer license under the provisions of 61-4-101, file with the division a certified copy of his written agreement with a manufacturer and a certificate of appointment as dealer or distributor. The certificate of appointment must be signed by an authorized agent of the manufacturer of domestic vehicles whenever there is a direct manufacturer dealer agreement or by an authorized agent of the distributor whenever the manufacturer is wholesaling through an appointed distributorship. The certificate must be signed by an authorized agent of the importer of foreign made vehicles whenever there is a direct importer-dealer agreement or by an authorized agent of the distributor whenever there is an indirect distributor-dealer agreement. The distributor's certificate of appointment must be signed by an authorized agent of the manufacturer of domestically manufactured vehicles or by an authorized agent of the manufacturer or importer of foreign made vehicles.

(2) A franchisee need not file a written agreement or certificate of appointment if the manufacturer on direct dealerships or distributor on indirect dealerships or importer on direct dealerships uses the identical basic agreement for all its franchised dealers or distributors in this state and certifies in the certificate of appointment that the blanket agreement is on file and the written agreement with the particular dealer or distributor, respectively, is identical with the filed blanket agreement and that he has filed with the division one such agreement together with a list of franchised dealers or distributors.

(3) A manufacturer, distributor, or importer shall notify the division within 30 days of any revision of or addition to the basic agreement on file or of any franchise supplement to the agreement. Annual renewal of a certificate filed as provided in this section is not required.

(4) A manufacturer must file with the division a copy of the delivery and preparation obligations required to be performed by a dealer prior to the delivery of a new motor vehicle to a buyer. These delivery and preparation obligations constitute the dealer's only responsibility for product liability as between the dealer and the manufacturer. Any mechanical, body, or parts defects arising from an express or implied warranty of the manufacturer constitute the manufacturer's product or warranty liability only; provided, however, that this section shall not affect the obligations of new motor vehicle dealers to perform such warranty repair and maintenance as may be required by law or contract. The manufacturer must compensate an authorized dealer who performs work to rectify the manufacturer's product or warranty defect or delivery and preparation obligations at the dealer's regular established retail rate for similar work.

(5) The dealer must furnish the purchaser of a new vehicle with a signed copy of the manufacturer's delivery and preparation requirements indicating that each of those requirements has been performed.

History: En. 51-604 by Sec. 4, Ch. 380, L. 1977; R.C.M. 1947, 51-604(1) thru (3), (5), (6); amd. Sec. 2, Ch. 431, L. 1981.

Compiler's Comments

1981 Amendment: Changed "department" to "division" throughout the section.

61-4-205. Limitations on cancellation and termination. (1) Notwithstanding the terms, provisions, or conditions of any agreement or franchise, no franchisor may cancel, terminate, or refuse to continue a franchise unless the franchisor has cause for termination or noncontinuance.

(2) No franchisor may enter into a franchise for the purpose of establishing an additional new motor vehicle dealership in any community in which

the same line-make is then represented unless there is good cause for an additional new motor vehicle dealership under a franchise and that it is in the public interest.

(3) If a franchisor seeks to terminate or not continue a franchise or seeks to enter into a franchise establishing an additional new motor vehicle dealership of the same line-make, the franchisor shall, not less than 30 days prior to the intended action, and the franchisee may, at any time, file a notice with the division of intention to terminate or not continue the franchise or to enter into a franchise for additional representation of the same line-make. No notice of intention to terminate or not continue a franchise may be required from a franchisor until the conclusion of any review proceeding of that intention offered to the franchisee under the franchise. This section does not apply to an intended termination or noncontinuance of a franchise that the franchisee elects voluntarily, pursuant to a plan established by a franchisor, to submit to binding arbitration.

(4) Upon receiving a notice of intention under the provisions of subsection (3), the division shall, within 5 days of receipt of a notice of intention, send by certified mail, with return receipt requested, a copy of the notice to the franchisor and to the franchisee whose franchise the franchisor seeks to establish, terminate, or not continue. If the notice states an intent to establish an additional new motor vehicle dealership, a copy of the notice shall be sent within 5 days of receipt to all franchisees in the community who are then engaged in the business of offering to sell or selling the same line-make. Copies of notices shall be addressed to the principal place of business of each recipient and to the statutory agent of each corporate recipient. The division may also give a copy of the franchisor's notice to any other parties whom the division may consider interested persons, such copy to be in the form and substance and given in the manner the division finds appropriate.

(5) In instances where the change in ownership has the effect of the sale of the franchise, the franchisor may not without good cause withhold its consent to the sale. Good cause relates only to the transferee's financial and managerial capabilities or to the inability of the transferee to comply with a state or federal law relating to new motor vehicle dealerships. The burden of establishing good cause is upon the franchisor.

(6) Notwithstanding the terms, provisions, or conditions of an agreement or franchise, in the event of the sale or transfer of ownership of the franchisee's dealership by sale or transfer of the business or by stock transfer to the dealer's spouse, son, or daughter, the franchisor shall give effect to such a change in the franchise unless the transfer of the franchisee's new motor vehicle dealer's license is denied or the new owner is unable to obtain a license under the laws of this state.

(7) If a franchisor enters into or attempts to enter into a franchise, whether upon termination or refusal to continue another franchise or upon the establishment of an additional new motor vehicle dealership in a community where the same line-make is then represented, without first complying with the provisions of this part, no license under 61-4-101 through 61-4-105 may be issued to that franchisee or proposed franchisee to engage in the

business of selling new motor vehicles manufactured or distributed by that franchisor.

History: **En. 51-605 by Sec. 5, Ch. 380, L. 1977; R.C.M. 1947, 51-605(1) thru (4), (11), (12), (14); amd. Sec. 2, Ch. 431, L. 1981.**

Compiler's Comments
1981 Amendment: Changed "department" to "division" throughout the section.

61-4-206. Objections — hearing. (1) A person who receives or is entitled to receive a copy of a notice provided for in subsection (4) of 61-4-205 may object to the approval of the proposed action by filing a written objection with the division within 15 days from the date the notice was received by the person entitled to receive the notice. If no objection is filed within 15 days from the date the notice was received, the proposed action shall be approved.

(2) If a timely objection has been filed, the division shall enter an order fixing the time, which shall be within 30 days of the date of the order, and place of a hearing on the objection and shall send by certified mail with return receipt requested a copy of the notice provided for in subsection (4) of 61-4-205.

(3) The division may upon request continue the date of hearing for a period of 30 days and may upon application, but not ex parte, continue the date of hearing for an additional period of 30 days.

(4) Upon hearing, the franchisor has the burden of proof to establish that good cause exists to terminate or not continue the franchise. When there is an objection to the establishment of a new motor vehicle dealership, the burden of proof that good cause does exist shall be with the franchisor.

(5) The rules of evidence for such hearing shall be those found in chapter 4, Title 2. The division shall reasonably apportion all costs between the parties.

(6) The division may issue subpoenas, administer oaths, and compel the attendance of witnesses and production of books, papers, documents, and all other evidence. The division may apply to the district court of the county in which the hearing is held for a court order enforcing this section. The hearing shall be conducted pursuant to chapter 4, Title 2.

(7) A transcript of the testimony of each witness taken at the hearing shall be made and preserved. Within 30 days after the hearing, the division shall make written findings of fact and conclusions and enter a final order.

(8) Any party to the hearing before the division may appeal pursuant to chapter 4, Title 2.

History: **En. 51-605 by Sec. 5, Ch. 380, L. 1977; R.C.M. 1947, 51-605(5) thru (9), (13), (17), (18); amd. Sec. 2, Ch. 431, L. 1981.**

Compiler's Comments
1981 Amendment: Changed "department" to "division" throughout the section.

61-4-207. Determination of good cause. (1) In determining whether good cause has been established for terminating or not continuing a franchise, the division shall take into consideration the existing circumstances, including but not limited to:

(a) amount of business transacted by the franchise;

(b) investment necessarily made and obligations incurred by the franchisee in the performance of his part of the franchise;

(c) permanency of the investment;

(d) whether it is injurious to the public welfare for the business of the franchisee to be discontinued;

(e) whether the franchisee has adequate new motor vehicle facilities, equipment, parts, and qualified management, sales, and service personnel to reasonably provide consumer care for the new motor vehicles sold at retail by the franchisee and any other new motor vehicle of the same line-make;

(f) whether the franchisee refuses to honor warranties of the franchisor to be performed by the franchisee if the franchisor reimburses the franchisee for such warranty work performed by the franchisee; and

(g) except as provided in subsection (2) of this section, failure by the franchisee to substantially comply with those requirements of the franchise that are determined by the division to be reasonable and material.

(2) Notwithstanding the terms, provisions, or conditions of an agreement or franchise, the following do not constitute good cause for the termination or noncontinuance of a franchise:

(a) a change in ownership of the franchisee's dealership;

(b) the fact that the franchisee refused to purchase or accept delivery of a new motor vehicle, part, accessory, or any other commodity or service not ordered by the franchisee.

(3) In determining whether good cause has been established for entering into an additional franchise for the same line-make, the division shall take into consideration the existing circumstances, including but not limited to:

(a) amount of business transacted by other franchisees of the same line-make in that community;

(b) investment necessarily made and obligations incurred by other franchisees of the same line-make in that community in the performance of their part of their franchises; and

(c) whether the franchisees of the same line-make in that community are providing adequate consumer care for the new motor vehicle products of the line-make which shall include the adequacy of new motor vehicle dealer sales and service facilities, equipment, supply of parts, and qualified management, sales, and service personnel.

History: En. 51-605 by Sec. 5, Ch. 380, L. 1977; R.C.M. 1947, 51-605(10), (15), (16); amd. Sec. 2, Ch. 431, L. 1981.

Compiler's Comments

1981 Amendment: Changed "department" to "division" throughout the section.

61-4-208. Coercion prohibited. (1) A manufacturer of new motor vehicles, factory branch, distributor, distributor branch, importer, field representative, officer, agent, or any representative thereof may not coerce or attempt to coerce a new motor vehicle dealer to accept delivery of a new motor vehicle, a part, or an accessory therefor or any other commodity that has not been ordered by the dealer.

(2) A manufacturer, factory branch, distributor, distributor branch, importer, field representative, officer, or agent or representative thereof may

not coerce or attempt to coerce a new motor vehicle dealer to enter into an agreement with such manufacturer, factory branch, distributor, distributor branch, or representative thereof or do any other act unfair to the dealer by:

(a) threatening to cancel or not renew a franchise existing between the manufacturer, factory branch, distributor, distributor branch, or representative thereof and the dealer; or

(b) threatening to withhold, delay, or disrupt the receipt of new motor vehicles or any motor vehicle parts or supplies ordered by the dealer from the manufacturer, factory branch, distributor, distributor branch, importer, or representative or agent thereof.

History: **En. 51-606 by Sec. 6, Ch. 380, L. 1977; R.C.M. 1947, 51-606.**

61-4-209. Cease and desist orders. When the division has reasonable cause to believe, from information furnished to or from an investigation made by it, that any person is engaged in any business regulated by this part without being licensed as required, it shall immediately issue and serve upon such person, by certified mail, a cease and desist order, requiring him to cease and desist from further engaging in that business. Upon failure of that person to comply with the order, the division shall file an action in the district court of Lewis and Clark County to restrain and enjoin the person from engaging in the business. The court in the action shall proceed as in other actions for injunctions.

History: **En. 51-608 by Sec. 8, Ch. 380, L. 1977; R.C.M. 1947, 51-608; amd. Sec. 2, Ch. 431, L. 1981.**

Compiler's Comments

1981 Amendment: Changed "department" to "division" throughout the section.

61-4-210. Penalties. (1) Except as provided in subsection (2), a person who violates any provision of this part is guilty of a misdemeanor and upon conviction shall be fined not less than $500 or more than $1,000 for each violation. Each day that a violation continues or occurs constitutes a separate violation.

(2) A manufacturer on direct dealerships, distributor on indirect dealerships, or importer on direct dealerships who has filed with the division an agreement used by all its franchisees in this state together with a list of all such franchisees and who fails to notify the division within 30 days of any revision, change, or addition thereto is guilty of a misdemeanor and upon conviction shall be fined not to exceed $500.

(3) If any new motor vehicle dealer incurs pecuniary loss due to a violation of this part by a manufacturer, distributor, importer, or factory branch or representative or agent thereof, the dealer may recover damages therefor in a court of competent jurisdiction in amount equal to three times the pecuniary loss, together with costs including reasonable attorney's fees.

History: **En. 51-604, 51-607 by Secs. 4, 7, Ch. 380, L. 1977; R.C.M. 1947, 51-604(4), 51-607; amd. Sec. 2, Ch. 431, L. 1981.**

Compiler's Comments

1981 Amendment: Changed "department" to "division" throughout the section.

61-4-211. Repealed. Sec. 4, Ch. 431, L. 1981.
History: En. Sec. 2, Ch. 557, L. 1979.

Part 3

Transportation of Vehicles

61-4-301. Permit and transit plates for new vehicles being transported by driveaway or towaway methods. (1) A person, firm, partnership, or corporation, regularly and lawfully engaged in the transportation of new vehicles over the highways of this state from manufacturing or assembly points to agents of manufacturers and dealers in this state or in other states, territories, or foreign countries or provinces by the driveaway or towaway methods, where the vehicles being driven, towed, or transported by the saddle-mount, towbar or full-mount methods, or a lawful combination of these methods, will be transported over the highways of the state but once, may annually apply to the department of justice for a permit to use the highways of this state and shall pay, upon filing the application, a fee of $100. Upon processing of the application, that department shall issue an annual permit to the applicant.

(2) The permitholder may also apply to the department of justice for a sufficient number of distinctive transit plates or devices showing the permit number for identification of the vehicles being transported by the permitholder, and the plates or devices may be used on a vehicle being driven, towed, or transported by and under the control of the permitholder. That department shall collect the additional sum of $1 for each pair of transit plates or devices applied for and issued.

(3) The department of justice shall retain the permit and plate fees to defray costs of administering 61-4-301 through 61-4-308.

(4) The permit and transit plates or devices expire on December 31 of each year.

History: En. Sec. 6-401, Ch. 197, L. 1965; amd. Sec. 121, Ch. 316, L. 1974; R.C.M. 1947, 32-3401.

61-4-302. One-trip fee in addition to permit and plate fees payable quarterly. In addition to the permit and plate fees, a permit holder shall pay to the department of justice a one-trip fee of $5 per driven vehicle. The fee shall be paid within 15 days after the end of the calendar quarter upon forms recommended or supplied by that department.

History: En. Sec. 6-402, Ch. 197, L. 1965; amd. Sec. 122, Ch. 316, L. 1974; R.C.M. 1947, 32-3402.

61-4-303. Disposition of funds collected. The department of justice shall retain 5% of the funds collected in payment of the trip fees to defray costs of administration. The remaining 95% shall be transferred, on or before the 15th day of each month after collection, to the credit of the department of highways.

History: En. Sec. 6-403, Ch. 197, L. 1965; amd. Sec. 123, Ch. 316, L. 1974; amd. Sec. 2, Ch. 286, L. 1977; R.C.M. 1947, 32-3403.

61-4-304. Fees provided for to be in addition to fees now payable under chapter 12, Title 69. The fees provided for driveaway or towaway transportation are in addition to any fees payable by for-hire carriers under the provisions of chapter 12, Title 69.

History: En. Sec. 6-404, Ch. 197, L. 1965; R.C.M. 1947, 32-3404.

61-4-305. Driveaway or towaway fees in lieu of other fees payable — election to pay other fees. The fees provided for driveaway or towaway transporters are in consideration of the right to use the highways of the state and except as provided in 61-4-304 are in lieu of all other fees including those which might be payable under the provisions of part 2 of chapter 10. However, any operator may elect to pay the fees payable under the provisions of that part.

History: En. Sec. 6-405, Ch. 197, L. 1965; R.C.M. 1947, 32-3405; amd. Sec. 51, Ch. 421, L. 1979.

61-4-306. Exemptions from fees. The fees provided for driveaway or towaway transporters shall not apply to:

(1) vehicles regularly used in the hauling of vehicles by the truckaway method or to the vehicles so transported;

(2) vehicles operated under dealers' licenses or plates;

(3) vehicles registerable under any other provisions of law;

(4) any person not issued a driveaway or towaway permit.

History: En. Sec. 6-406, Ch. 197, L. 1965; R.C.M. 1947, 32-3406.

61-4-307. Display of plates. A vehicle or combination of vehicles transported over the highways of the state by a permitholder shall display in a prominent position thereon the distinctive transit plates or devices, the towing vehicle displaying such on the front thereof and a towed vehicle on the rear thereof.

History: En. Sec. 3, Ch. 133, L. 1953; Sec. 53-632, R.C.M. 1947; amd. and redes. 32-3407 by Sec. 185, Ch. 316, L. 1974; R.C.M. 1947, 32-3407.

61-4-308. List of holders of permits and transit plates. The department of justice shall furnish the department of highways a list of the permitholders and of the transit plates or devices issued to those permitholders.

History: En. Sec. 4, Ch. 133, L. 1953; Sec. 53-633, R.C.M. 1947; amd. and redes. 32-3408 by Sec. 186, Ch. 316, L. 1974; R.C.M. 1947, 32-3408.

61-4-309. Definition. (1) "Mobile home", for the purposes of 61-4-310, means a trailer or semitrailer which is designed, constructed, and equipped as a dwelling place, living abode, or sleeping place (either permanently or temporarily) and is equipped for movement on streets and highways and exceeds 25 feet in length, exclusive of trailer hitch.

(2) For the purpose of 61-4-310, a mobile home shall be considered unladen when all items are removed except the equipment originally installed by the manufacturer and personal effects of owners.

History: En. Sec. 1, Ch. 182, L. 1955; amd. Sec. 1, Ch. 126, L. 1965; amd. Sec. 2, Ch. 18, L. 1974; R.C.M. 1947, 53-119.1(part).

61-4-310. Single movement permit — fee — limitation — county treasurer to issue. (1) A vehicle, subject to license under this title, may be moved unladen upon the highways of this state from a point within the state to a point of destination. The county treasurer at the point of the origin of the movement shall issue a special permit therefor in lieu of fees required under 61-3-321 and part 2 of chapter 10 of this title, upon application presented to him in such form as shall be provided by the division and upon exhibiting to said county treasurer proof of ownership and evidence that the personal property taxes on such vehicle, if any are due thereon, have been paid and upon payment therefor of a fee of $5. Such permit shall not be in lieu of fees and permits required under 61-4-301 and 61-4-302.

(2) Such permit shall be for the transit of the vehicle only, and the vehicle shall not at the time of such transit be used for the transportation of any persons, except the driver, or property whatsoever for compensation or otherwise, and shall be for one transit only between the points of origin and destination as set forth in the application and shown on the permit.

(3) A junk vehicle as defined in part 5, chapter 10, Title 75, being driven or towed to an auto wrecking graveyard for disposal is exempt from the provisions of this section.

History: En. Sec. 1, Ch. 182, L. 1955; amd. Sec. 1, Ch. 126, L. 1965; amd. Sec. 2, Ch. 18, L. 1974; R.C.M. 1947, 53-119.1(part).

61-4-311. Fees credited to general road fund. All fees collected under 61-4-310 shall belong to the general road fund of the county and be for the use and benefit of that fund.

History: En. Sec. 2, Ch. 182, L. 1955; R.C.M. 1947, 53-119.2.

Part 4

Monopolies in Financing Sale of Motor Vehicles

61-4-401. Declaration of policy. It is hereby declared to be the policy of this state that free and unrestrained competition shall prevail in the business of financing the purchase or sale of motor vehicles.

History: En. Sec. 1, Ch. 144, L. 1937; R.C.M. 1947, 51-201.

61-4-402. Definitions. (1) "Finance company" or "finance agency" shall mean any person, firm, association, corporation, or other organization engaged in the business of buying, selling, assigning, dealing, financing, or acquiring conditional contracts of sale or engaged in the business of purchasing or acquiring promissory notes or any other form or evidences of indebtedness of sale, either secured by vendor's lien, conditional bill of sale, chattel mortgage, or leases arising out of the sale of motor vehicles in this state.

(2) The term "manufacturer" shall mean any person, firm, corporation, partnership, or association engaged either directly or indirectly in the manufacture or wholesale distribution of motor vehicles.

(3) The terms "sell", "sold", "buy", and "purchase" as used in this part, include exchange, barter, gift, and offer or contract to sell or buy.

(4) The term "wholesale distributor" shall mean any person, firm, association, corporation, or other organization engaged directly or indirectly in the sale or distribution of motor vehicles to agents or to dealers.

History: **En. Sec. 2, Ch. 144, L. 1937; R.C.M. 1947, 51-202(b) thru (d), (f).**

61-4-403. Certain financing agreements prohibited. It is unlawful for any manufacturer or wholesale distributor of motor vehicles to sell or enter into a contract for the sale of motor vehicles to any motor vehicle dealer on the condition or under an agreement, expressed or implied, that the dealer will finance the purchase or sale of any motor vehicle or vehicles only through a designated finance company or finance agency. Any such condition, agreement, or understanding is against the public policy of the state, and such condition, agreement, or understanding is unlawful, void, and unenforceable, either at law or equity.

History: **En. Sec. 3, Ch. 144, L. 1937; R.C.M. 1947, 51-203; amd. Sec. 52, Ch. 421, L. 1979.**

61-4-404. Threats prima facie evidence. Any threat, expressed or implied, made directly or indirectly to any dealer by any manufacturer, or by any person who is engaged in the business of financing the purchase or sale of motor vehicles and is affiliated with or controlled by any manufacturer, that such manufacturer will cease to sell or will terminate or refuse to enter into a contract to sell motor vehicles to such dealer unless such dealer finances the purchase or sale of any such motor vehicle or vehicles only with or through a designated person, shall be presumed to be made at the direction of and with the authority of such manufacturer and shall be prima facie evidence of the fact that such manufacturer has sold or intends to sell such motor vehicle or vehicles on the condition or under the agreement prohibited by the provisions of this part.

History: **En. Sec. 4, Ch. 144, L. 1937; R.C.M. 1947, 51-204.**

61-4-405. Penalty. Any person who shall violate any of the provisions of this part and any employee, agent, or officer of any such person who shall participate in any manner in making, enforcing, or performing or in aiding or abetting in the performance of any such contract, condition, agreement, or understanding shall be deemed guilty of a crime and upon conviction thereof shall be punished for each offense by a fine of not more than $5,000 or by imprisonment in the penitentiary for not more than 5 years or in the county jail for not more than 1 year or by both such fine and imprisonment.

History: **En. Sec. 5, Ch. 144, L. 1937; R.C.M. 1947, 51-205.**

61-4-406. Suit for injury to business or property. In addition to the criminal and civil penalties herein provided, any person who shall be injured in his business or property by any other person or corporation or association or partnership by reason of anything forbidden or declared to be unlawful by this part may sue therefor in any court having jurisdiction thereof in the county where the defendant resides or is found or any agent resides or is found or where service may be obtained, without respect to the amount in controversy, and recover twofold the damages by him sustained and the costs of suit. Whenever it shall appear to the court before which any proceedings under this part may be pending that the ends of justice require that other parties shall be brought before the court, the court may cause them to be made parties defendant and summoned, whether they reside in the county where such action is pending or not.

History: **En. Sec. 6, Ch. 144, L. 1937; R.C.M. 1947, 51-206.**

CHAPTER 5

DRIVERS' LICENSES

Part 1 — Licensing Provisions

Section
61-5-101. Driver licensing responsibilities of the division of motor vehicles.
61-5-102. Operators and chauffeurs to be licensed.
61-5-103. Residency requirement.
61-5-104. Exemptions.
61-5-105. Who may not be licensed.
61-5-106. Instruction and traffic education permits and temporary licenses.
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61-5-108. Application of minors.
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61-5-114. Duplicate certificates.
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Part 4 — Driver License Compact

61-5-401. Driver License Compact.

61-5-402. Division as licensing authority — information and documents to be furnished.
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61-5-405. Offenses furnishing ground for suspension or revocation of license.
61-5-406. Review of administrative actions.

Part 1

Licensing Provisions

61-5-101. Driver licensing responsibilities of the division of motor vehicles. The division shall maintain a permanent place of business at the state capital and shall provide the necessary staff, facilities, and equipment for the purpose of providing driver license services as required by this part.

History: **En. Sec. 1, Ch. 267, L. 1947; amd. Sec. 1, Ch. 141, L. 1951; amd. Sec. 1, Ch. 101, L. 1957; amd. Sec. 1, Ch. 42, L. 1969; R.C.M. 1947, 31-117; amd. Sec. 53, Ch. 421, L. 1979; amd. Sec. 1, Ch. 451, L. 1979.**

Compiler's Comments

Composite section. This section was amended by Ch. 421 and Ch. 451, L. 1979, and a composite section was prepared by the Code Commissioner, 1979. Ch. 421 was a Code Commissioner bill and was not intended to make substantive changes in the law. Consequently, a conflict of language between Ch. 421 and Ch. 451 has been resolved in favor of the language used in Ch. 451.

61-5-102. Operators and chauffeurs to be licensed. (1) No person, except those hereinafter expressly exempted under 61-5-104, shall drive any motor vehicle upon a highway in this state unless such person has a valid Montana license as an operator or chauffeur under the provisions of this chapter. No person shall receive an operator's or chauffeur's license unless and until he surrenders to the division all valid operators' and chauffeurs' licenses in his possession issued to him by any other jurisdiction. All surrendered licenses shall be returned by the division to the issuing department together with information that the licensee is now licensed in this state. No person shall be permitted to have more than one valid operator's or chauffeur's license at any time.

(2) No person shall drive a motor vehicle as a chauffeur unless he holds a valid chauffeur's license. No person shall receive a chauffeur's license unless and until he surrenders to the division any operator's license issued to him or an affidavit that he does not possess an operator's license. Any person holding a valid chauffeur's license hereunder need not procure an operator's license.

(3) Whenever a city or town requires an operator or chauffeur to obtain a local driving license or permit, such a license or permit shall not be issued unless applicant therefor presents a state driver's license valid under the provisions of this chapter.

(4) A person operating a bicycle defined in 61-1-123(2) shall have in his possession at all times when operating the bicycle a valid Montana driver's license.

History: **En. Sec. 9, Ch. 267, L. 1947; amd. Sec. 1, Ch. 37, L. 1951; amd. Sec. 1, Ch. 79, L. 1957; amd. Sec. 1, Ch. 51, L. 1959; amd. Sec. 1, Ch. 211, L. 1961; R.C.M. 1947, 31-125(a) thru (c); (4)En. Sec. 9, Ch. 508, L. 1979.**

Compiler's Comments

Incorporation into existing law. Subsection (4) was enacted as a separate section without any codification instructions. The apparent intent of the Legislature was that it become part of Title 61, chapter 5, part 1, and the Code Commissioner has codified it accordingly. This arrangement may affect other sections in chapter 5, especially 61-5-307. See 1-11-103(4).

61-5-103. Residency requirement. Any person who has resided in this state for a period exceeding 90 days is considered to be a resident for the purpose of being licensed to operate a motor vehicle and must thereafter be licensed under the laws of this state before operating a motor vehicle.

History: En. Sec. 9, Ch. 267, L. 1947; amd. Sec. 1, Ch. 37, L. 1951; amd. Sec. 1, Ch. 79, L. 1957; amd. Sec. 1, Ch. 51, L. 1959; amd. Sec. 1, Ch. 211, L. 1961; R.C.M. 1947, 31-125(d); amd. Sec. 54, Ch. 421, L. 1979.

61-5-104. Exemptions. (1) The following persons are exempt from license hereunder:

(a) any person who is a member of the armed forces of the United States while operating a motor vehicle owned by or leased to the United States government and being operated on official business;

(b) any person while driving or operating any road machine, farm tractor, or implement of husbandry temporarily operated or moved on a highway.

(2) A nonresident who is at least 15 years of age and who has in his immediate possession a valid operator's license issued to him in his home state or country may operate a motor vehicle in this state only as an operator.

(3) A nonresident who is at least 18 years of age and who has in his immediate possession a valid chauffeur's license issued to him in his home state or country may operate a motor vehicle in this state either as an operator or chauffeur subject to the age limits applicable to chauffeurs in this state.

(4) Any nonresident who is at least 18 years of age, whose home state or country does not require the licensing of operators, may operate a motor vehicle as an operator only, for a period of not more than 90 days in any calendar year, if the motor vehicle so operated is duly registered in the home state or country of such nonresident.

(5) A driver's license issued hereunder to any person who enters the United States armed forces, if valid and in force and effect at the time such person enters the service, shall continue in full force and effect so long as such service shall continue unless such license is sooner suspended, revoked, or canceled for a cause as provided by law, and for not to exceed 30 days following the date on which holder of such driver's license is honorably separated from such service. During said 30-day period, such license shall be valid only when in the immediate possession of the licensee while driving and the licensee has his discharge, separation, leave, or furlough papers in his immediate possession.

History: En. Sec. 10, Ch. 267, L. 1947; amd. Sec. 1, Ch. 95, L. 1955; amd. Sec. 1, Ch. 137, L. 1961; amd. Sec. 1, Ch. 133, L. 1969; R.C.M. 1947, 31-126.

61-5-105. Who may not be licensed. The division of motor vehicles shall not issue any license hereunder to any person:

(1) as an operator, who is under the age of 16 years, with these exceptions:

(a) The division may issue an operator's license to a person who is 15 years if he has passed a driver's education course approved by the division and the superintendent of public instruction.

(b) The division may issue a restricted license as hereinafter provided to any person who is at least 13 years of age;

(2) as a chauffeur, employed by another for the principal purpose of driving a motor vehicle when in use exclusively for the transportation of property for compensation, who is under the age of 18 years, or to any person, as a chauffeur, who is employed by another for the principal purpose of driving a motor vehicle transporting passengers for hire or transporting school children, who is under the age of 18 years;

(3) as an operator or chauffeur, whose license has been suspended during the suspension, or to any person whose license has been revoked, except as provided in 61-5-208;

(4) as an operator or chauffeur, who is an habitual drunkard, or is addicted to the use of narcotic drugs;

(5) as an operator or chauffeur, who has previously been adjudged to be afflicted with or suffering from any mental disability or disease and who has not at the time of application been restored to competency by the methods provided by law;

(6) as an operator or chauffeur, who is required by this chapter to take an examination, unless the person shall have successfully passed such examination;

(7) who is required under the provisions of the motor vehicle financial responsibility laws of this state to deposit proof of financial responsibility and who has not deposited such proof;

(8) as an operator or chauffeur, who is suffering from any form of epileptic type seizures or similar disorders characterized by lapse of consciousness or control, either temporary or prolonged, which is or may become chronic; provided that the division may in its discretion issue a license to a person suffering from epileptic type seizures or similar disorder characterized by lapse of consciousness or control, if otherwise qualified to be licensed to drive a motor vehicle, when the afflicted person can show through a written report from his attending physician that he has not experienced an epileptic type seizure or similar disorder characterized by lapse of consciousness or control for a sufficient period and that the condition is stabilized as attested to by said physician.

History: **En. Sec. 11, Ch. 267, L. 1947; amd. Sec. 1, Ch. 60, L. 1955; amd. Sec. 1, Ch. 227, L. 1965; amd. Sec. 14, Ch. 94, L. 1973; amd. Sec. 1, Ch. 178, L. 1973; R.C.M. 1947, 31-127.**

61-5-106. Instruction and traffic education permits and temporary licenses. (1) Any person satisfying the age requirements specified in 61-5-105(1) may apply to the division for an instruction permit. The division may in its discretion, after the applicant has successfully passed all parts of the examination other than the driving test, issue to the applicant an instruction permit which shall entitle the applicant, while having such permit in his immediate possession, to drive a motor vehicle upon the public highways for a period of 6 months when accompanied by a licensed operator or chauffeur who is occupying a seat beside the driver. In addition, the division may issue such an instruction permit to any person who is at least 14 ½ years of age and who has successfully completed or is successfully participating in a traffic education course approved by the division and the superintendent of public instruction. Any instruction permit so issued shall be restricted to the operation of a motor vehicle only when accompanied by an approved instructor or licensed parent or guardian and may be further restricted to specific times and/or areas.

(2) The division upon receiving proper application may in its discretion issue a traffic education permit effective for a school year or more restricted period to an applicant who is enrolled in a traffic education program approved by the division even though the applicant has not reached the legal age to be eligible for an operator's license. Such permit shall entitle the permittee when he has such a permit in his immediate possession to operate only on a designated highway or within a designated area a motor vehicle only when an approved instructor is occupying a seat beside the permittee or a motorcycle only when under the immediate and proximate supervision of an approved instructor.

(3) The division may in its discretion issue a temporary driver's permit to an applicant for an operator's license permitting him to operate a motor vehicle while the division is completing its investigation and determination of all facts relative to such applicant's right to receive an operator's license. Such permit must be in his immediate possession while operating a motor vehicle, and it shall be invalid when the applicant's license has been issued or for good cause has been refused.

History: En. Sec. 13, Ch. 267, L. 1947; amd. Sec. 1, Ch. 120, L. 1961; amd. Sec. 1, Ch. 55, L. 1969; amd. Sec. 1, Ch. 271, L. 1973; amd. Sec. 1, Ch. 19, L. 1974; R.C.M. 1947, 31-129; amd. Sec. 1, Ch. 173, L. 1979.

61-5-107. Application for license, instruction permit, or motorcycle endorsement. (1) Every application for an instruction permit, operator's or chauffeur's license, or motorcycle endorsement shall be made upon a form furnished by the division. Every application shall be accompanied by the proper fee and payment of such fee shall entitle the applicant to not more than three attempts to pass the examination within a period of 6 months from the date of application.

(2) Every such application shall state the full name, date of birth, sex, and residence address of the applicant, and briefly describe the applicant, and shall state whether the applicant has theretofore been licensed as an operator or chauffeur, and, if so, when and by what state or country, and whether any such license has ever been suspended or revoked, or whether an application has ever been refused, and, if so, the date of and reason for such suspension, revocation, or refusal.

(3) Whenever application is received from an applicant previously licensed by any other jurisdiction, the division shall request a copy of such applicant's driving record from such previous licensing jurisdiction. When received, such driving records shall become a part of the driver's record in this state with the same force and effect as though entered on the driver's record in this state in the original instance.

History: En. Sec. 14, Ch. 267, L. 1947; amd. Sec. 1, Ch. 28, L. 1969; R.C.M. 1947, 31-130.

61-5-108. Application of minors. (1) The application of any person under the age of 18 years for an instruction permit or operator's license shall be signed and verified before a person authorized to administer oaths by both the father and mother of the applicant, if both are living and have custody of him, or by the surviving parent, or in the event neither parent is living or has custody, then by the person or guardian having such custody or by an employer of such minor, or in the event there is no guardian or employer then by some other responsible person who is willing to assume the obligation imposed under this chapter upon a person signing the application of a minor.

(2) Any negligence or willful misconduct of a minor under the age of 18 years when driving a motor vehicle upon a highway shall be imputed to a person who has signed the application of such minor for a permit or license, which person shall be jointly and severally liable with such minor for any damages caused by such negligence or willful misconduct, except as otherwise provided in subsection (3) of this section.

(3) In the event a minor deposits or there is deposited upon his behalf proof of financial responsibility in respect to the operation of a motor vehicle owned by him, or if not the owner of a motor vehicle, then with respect to the operation of any motor vehicle, in form and in amounts as required under the motor vehicle financial responsibility laws of this state, then the division may accept the application of such minor when signed by one parent or the guardian of such minor, and while such proof is maintained such parent or guardian shall not be subject to the liability imposed under subsection (2) of this section.

History: En. Sec. 15, Ch. 267, L. 1947; amd. Sec. 1, Ch. 140, L. 1961; R.C.M. 1947, 31-131.

61-5-109. Release from liability. Any person who has signed the application of a minor for a license may thereafter file with the division a verified written request that the license of said minor so granted be canceled. Thereupon the division shall cancel the license of said minor and the person who signed the application of such minor shall be relieved from the liability imposed under this chapter by reason of having signed such application on account of any subsequent negligence or willful misconduct of such minor in operating a motor vehicle.

History: En. Sec. 16, Ch. 267, L. 1947; R.C.M. 1947, 31-132.

61-5-110. Examination of applicants. The division shall examine every applicant for an operator's or chauffeur's license or motorcycle endorsement, except as otherwise provided in this section. Such examination shall include a test of the applicant's eyesight, his ability to read and understand highway signs regulating, warning, and directing traffic, his knowledge of the traffic laws of this state, and shall include an actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle or motorcycle. The division shall make provision for giving an examination either in the county where the applicant resides or at a place adjacent thereto reasonably convenient to the applicant within not more than 30 days from the date the application is received.

History: En. Sec. 18, Ch. 267, L. 1947; amd. Sec. 1, Ch. 408, L. 1975; R.C.M. 1947, 31-134(a).

61-5-111. Licenses issued to operators and chauffeurs — renewals and expiration — fees — disposition. (1) The division shall have authority to appoint county treasurers and other qualified officers to act as its agents for the sale of driver's licenses receipts and shall make necessary rules governing such sales. In those areas where the division provides driver licensing services 3 days or more a week the division is responsible for sale of receipts and may not appoint an agent. The division, upon receipt of payment of the fees specified in this section, shall issue to every applicant qualifying therefor an operator's or chauffeur's license as applied for. Such licenses shall contain a photograph of the licensee in the size and form as prescribed by the division, a distinguishing number issued to the licensee; the full name, date of birth, residence address, and a brief description of the licensee; and either a facsimile of the signature of the licensee or a space upon which he shall write his signature in pen and ink immediately upon receipt of the license. No license shall be valid until it has been so signed by the licensee. Five percent of the license fees collected by the county treasurer shall be deposited by the county treasurer for the use of the county general fund. In the event no agent is appointed under this section, 5% of the license fees collected by the division shall be retained by the division to defray the cost of handling.

(2) The division shall, when any person applies for renewal of an operator's or chauffeur's license, test the applicant's eyesight and may also in the division's discretion have the applicant demonstrate his physical ability to operate and to exercise ordinary and reasonable care in the operation of a motor vehicle. A person shall be considered to have applied for renewal of a Montana operator's or chauffeur's license if the application is made within 3 months of the expiration of his license.

(3) Licenses shall expire on the anniversary of the date of birth of the licensee 4 years or less after the date of issue.

(4) Whenever the division issues an original license to a person under the age of 18 years, the license shall be designated and clearly marked as a "provisional license". Any license so designated and marked may be suspended by the division for a period of not more than 12 months, when its records disclose that the licensee, subsequent to the issuance of such license, has been guilty of careless or negligent driving. Upon renewal as applicable to operator's licenses, the division may, for any reasonable cause as shown by its records, designate the renewal of the license as provisional; otherwise, a license in usual form shall be issued subject to other provisions of the laws of Montana.

(5) It shall be unlawful for any person to have in his possession or under his control more than one Montana operator's or chauffeur's license at any one time. A license is not valid for the operation of a motorcycle until the holder thereof has completed the requirements of 61-5-110 and the license has been clearly marked with the words "motorcycle endorsement".

(6) Fees for driver's licenses shall be as follows:

(a) driver's license — $2 per year or fraction thereof;

(b) motorcycle endorsement — 50 cents per year or fraction thereof.

(7) The county treasurer or other agent of the division collecting such fees shall retain 5% of each fee for the use of the county general fund and shall transmit the remainder to the state treasurer, who shall deposit to the credit of the state general fund all money received by him from the collection of the fees.

History: (1) thru (6)En. Sec. 19, Ch. 267, L. 1947; amd. Sec. 1, Ch. 135, L. 1951; amd. Sec. 1, Ch. 130, L. 1953; amd. Sec. 1, Ch. 249, L. 1961; amd. Sec. 1, Ch. 228, L. 1963; amd. Sec. 1, Ch.

23, L. 1967; amd. Sec. 1, Ch. 288, L. 1971; amd. Sec. 4, Ch. 423, L. 1971; amd. Sec. 1, Ch. 409, L. 1975; Sec. 31-135, R.C.M. 1947; (7)En. Sec. 13, Ch. 199, L. 1943; Sec. 31-113, R.C.M. 1947; R.C.M. 1947, 31-113, 31-135(part); amd. Sec. 1, Ch. 361, L. 1979; amd. Sec. 55, Ch. 421, L. 1979.

61-5-112. Classification of chauffeurs — special restrictions. (1) The division upon issuing a chauffeur's license shall indicate thereon the class of license so issued and shall appropriately examine each applicant according to the class of license applied for and may impose such rules for the exercise thereof as it considers necessary for the safety and welfare of the traveling public.

(2) No person may drive any school bus transporting school children or any motor vehicle when in use for the transportation of persons for compensation until he has been licensed as a chauffeur for either such purpose and the license so indicates. The division may not issue a chauffeur's license for either purpose unless the applicant has had at least 1 year of driving experience prior thereto and the division is fully satisfied as to the applicant's competency and fitness to be employed.

History: En. Sec. 12, Ch. 267, L. 1947; amd. Sec. 1, Ch. 26, L. 1969; amd. Sec. 15, Ch. 94, L. 1973; R.C.M. 1947, 31-128; amd. Sec. 56, Ch. 421, L. 1979.

61-5-113. Restricted licenses. (1) The division upon issuing an operator's or chauffeur's license shall have authority whenever good cause appears to impose restrictions suitable to the licensee's driving ability with respect to the type of or special mechanical control devices required on a motor vehicle which the licensee may operate or such other restrictions applicable to the licensee as the division may determine to be appropriate to assure the safe operation of a motor vehicle by the licensee.

(2) The division may either issue a special restricted license or may set forth such restrictions upon the usual license form.

(3) The division may upon receiving satisfactory evidence of any violation of the restrictions of such license suspend or revoke the same but the licensee shall be entitled to a hearing as upon suspension or revocation under this chapter.

(4) It is a misdemeanor for any person to operate a motor vehicle in any manner in violation of the restrictions imposed in a restricted license issued to him.

History: En. Sec. 21, Ch. 267, L. 1947; R.C.M. 1947, 31-137.

61-5-114. Duplicate certificates. In the event that an instruction permit or operator's or chauffeur's license issued under the provisions of this chapter is lost or destroyed, the person to whom the same was issued may upon the payment of a fee of $1 obtain a duplicate or substitute thereof, upon furnishing proof satisfactory to the division that such permit or license has been lost or destroyed.

History: En. Sec. 22, Ch. 267, L. 1947; amd. Sec. 1, Ch. 36, L. 1953; amd. Sec. 16, Ch. 121, L. 1965; R.C.M. 1947, 31-138.

61-5-115. Notice of change of address or name. Whenever any person after applying for or receiving an operator's or chauffeur's license shall move from the address named in such application or in the license issued to him or when the name of a licensee is changed by marriage or otherwise such person shall within 10 days thereafter notify the division in writing of his old and new addresses or of such former and new names and of the number of any license then held by him.

History: En. Sec. 24, Ch. 267, L. 1947; R.C.M. 1947, 31-140.

61-5-116. License to be carried and exhibited on demand. Every licensee shall have his operator's or chauffeur's license in his immediate possession at all times when operating a motor vehicle and shall display the same upon demand of a justice of the peace, a peace officer, a highway patrolman, or a field deputy or inspector of the division. However, no person charged with violating this section shall be convicted if he produces in court or the office of the arresting officer an operator's or chauffeur's license theretofore issued to him and valid at the time of his arrest.

History: En. Sec. 20, Ch. 267, L. 1947; R.C.M. 1947, 31-136.

Part 2

Revocation, Suspension, or Cancellation of Licenses

61-5-201. Authority of division to cancel licenses. (1) The division is hereby authorized to cancel any operator's or chauffeur's license upon determining that the licensee was not entitled to the issuance thereof hereunder or that since the issuance thereof said licensee has become ineligible (such ineligibility shall be determined pursuant to the provisions of 61-5-105) or that said licensee failed to give the required or correct information in his application or committed any fraud in making such application.

(2) Upon such cancellation, the licensee must surrender the license so canceled to the division.

History: En. Sec. 26, Ch. 267, L. 1947; amd. Sec. 1, Ch. 219, L. 1973; R.C.M. 1947, 31-142.

61-5-202. Cancellation of license upon death of person signing minor's application. The division upon receipt of satisfactory evidence of the death of the persons who signed the application of a minor for a license shall cancel such license and shall not issue a new license until such time as a new application, duly signed and verified, is made as required by this chapter. This provision shall not apply in the event the minor has attained the age of 18 years.

History: En. Sec. 17, Ch. 267, L. 1947; R.C.M. 1947, 31-133.

61-5-203. Suspending privileges of nonresidents. The privilege of driving a motor vehicle on the highways of this state given to a nonresident hereunder shall be subject to suspension or revocation by the division in like manner and for like causes as an operator's or chauffeur's license issued hereunder may be suspended or revoked.

History: En. Sec. 27, Ch. 267, L. 1947; R.C.M. 1947, 31-143(a).

61-5-204. Suspending resident's license upon conviction in another state. The division is authorized to suspend or revoke the license of any resident of this state or the privilege of a nonresident to drive a motor vehicle in this state upon receiving notice of the conviction of such person in another state of an offense therein which, if committed in this state, would be grounds for the suspension or revocation of the license of an operator or chauffeur.

History: **En. Sec. 28, Ch. 267, L. 1947; R.C.M. 1947, 31-144.**

61-5-205. Mandatory revocation of license upon proper authority. The division upon proper authority shall revoke the license or operating privilege of any operator or chauffeur upon receiving a record of such operator's or chauffeur's conviction or forfeiture of bail not vacated of any of the following offenses, when such conviction or forfeiture has become final:

(1) negligent homicide resulting from the operation of a motor vehicle;

(2) driving a motor vehicle while under the influence of alcohol or narcotic drug, or willfully or knowingly under the influence of any other drug to a degree which renders him incapable of safely driving a motor vehicle, or a combination thereof except as provided in 61-5-208;

(3) any felony in the commission of which a motor vehicle is used;

(4) failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;

(5) perjury or the making of a false affidavit or statement under oath to the division under this chapter or under any other law relating to the ownership or operation of motor vehicles;

(6) conviction or forfeiture of bail not vacated, upon three charges of reckless driving committed within a period of 12 months.

History: **En. Sec. 30, Ch. 267, L. 1947; amd. Sec. 1, Ch. 192, L. 1957; amd. Sec. 1, Ch. 125, L. 1961; amd. Sec. 2, Ch. 155, L. 1969; amd. Sec. 47, Ch. 359, L. 1977; amd. Sec. 2, Ch. 430, L. 1977; R.C.M. 1947, 31-146.**

61-5-206. Authority of division to suspend license or driving privilege or issue probationary license. (1) The division is hereby authorized to suspend the license or driving privilege of an operator or chauffeur without preliminary hearing upon a showing by its records or other sufficient evidence that the licensee:

(a) has been involved as a driver in any accident resulting in the death or personal injury of another or serious property damage;

(b) has been convicted with such frequency of serious offenses against traffic regulations governing the movement of vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highways;

(c) is an habitually reckless or negligent driver of a motor vehicle;

(d) is incompetent to drive a motor vehicle;

(e) has permitted an unlawful or fraudulent use of such license as specified in 61-5-302;

(f) has committed an offense in another state which if committed in this state would be grounds for suspension or revocation; or

(g) has falsified his date of birth on his application for a driver's license.

(2) However, the division may, in its discretion, and in lieu of such suspension of license or driving privilege, issue a probationary license to an operator or chauffeur, without preliminary hearing, upon a showing by its records or other sufficient evidence that the licensee's driving record is such as would authorize suspension as provided in subsection (1) hereof. Upon

issuance of a probationary license the licensee shall be subject to the restrictions set forth thereon. The licensee's driving privilege may be suspended upon conviction or forfeiture of bail not vacated of any traffic violation during the period of such probation. The licensee shall surrender to the division all driver licenses theretofore issued to him before such probationary license shall be issued. His refusal or neglect to surrender such licenses, upon demand, shall be ground for suspending all such licenses. Probationary licenses may be issued for a period not to exceed 12 months.

(3) Upon suspending the license of any person or upon placing such person on probation, as hereinbefore in this section authorized, the division shall immediately notify the licensee in writing and upon his request shall afford him an opportunity for a hearing as early as practical within not to exceed 20 days after receipt of such request in the county wherein the licensee resides unless the division and the licensee agree that such hearing may be held in some other county. Upon such hearing the division through its duly authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee. Upon such hearing the division shall either rescind its order of suspension or probation, or, good cause appearing therefor, may affirm, reduce, or extend the period of probation or suspension of such license.

History: En. Sec. 31, Ch. 267, L. 1947; amd. Sec. 1, Ch. 101, L. 1961; amd. Sec. 1, Ch. 137, L. 1969; R.C.M. 1947, 31-147.

61-5-207. Reexamination — when required. The division having good cause to believe that a licensed operator or chauffeur is incompetent or otherwise not qualified to be licensed, may upon written notice of at least 5 days to the licensee require him to submit to an examination. Upon the conclusion of such examination the division shall take action as may be appropriate and may suspend or revoke the license of such person or permit him to retain such license, or may issue a license subject to restrictions as permitted under 61-5-113. Refusal or neglect of the licensee to submit to such examination shall be ground for suspension or revocation of his license.

History: En. Sec. 32, Ch. 267, L. 1947; R.C.M. 1947, 31-148.

61-5-208. Period of suspension or revocation. (1) The division may not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways for a period of more than 1 year, except as permitted under 61-5-207, 61-5-212, 61-6-123, and 61-11-211.

(2) Any person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked is not entitled to have such license or privilege renewed or restored unless the revocation was for a cause which has been removed, except that after the expiration of the period of such revocation or suspension, the person may make application for a new license as provided by law but the division may not then issue a new license unless and until it is satisfied after investigation of character, habits, and driving ability of the person that it is safe to grant the privilege of driving a motor vehicle on the public highways. When any person is convicted or forfeits bail or collateral not vacated for the offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol

or a narcotic drug or knowingly or willingly under the influence of any other drug to a degree which renders him incapable of safely driving a motor vehicle or a combination thereof, the division shall, upon receiving a report of such conviction or forfeiture of bail or collateral not vacated, suspend the license or driving privilege of the person for a period of 6 months. Upon receiving a report of a conviction or forfeiture of bail or collateral for a second, third, or subsequent offense within 5 years of the first offense, the division shall revoke the license or driving privilege of the person for a period of 1 year.

(3) The period for all revocations made mandatory by 61-5-205 shall be 1 year except as provided in subsection (2) of this section.

(4) The period of revocation for any person convicted of any offense which makes mandatory the revocation of the operator's or chauffeur's license commences from date of conviction or forfeiture of bail.

History: (1) thru (3)En. Sec. 33, Ch. 267, L. 1947; amd. Sec. 1, Ch. 126, L. 1957; amd. Sec. 1, Ch. 161, L. 1961; amd. Sec. 1, Ch. 339, L. 1969; amd. Sec. 4, Ch. 430, L. 1977; Sec. 31-149, R.C.M. 1947; (4)En. Sec. 29, Ch. 267, L. 1947; amd. Sec. 1, Ch. 165, L. 1957; amd. Sec. 1, Ch. 27, L. 1961; amd. Sec. 1, Ch. 386, L. 1973; amd. Sec. 3, Ch. 430, L. 1977; Sec. 31-145, R.C.M. 1947; R.C.M. 1947, 31-145(d), 31-149; amd. Sec. 57, Ch. 421, L. 1979.

61-5-209. Surrender and return of license. The division upon suspending or revoking a license shall require that such license shall be surrendered to and be retained by the division except that at the end of the period of suspension such license so surrendered shall be returned to the licensee.

History: En. Sec. 34, Ch. 267, L. 1947; R.C.M. 1947, 31-150.

61-5-210. No operation under foreign license during suspension or revocation in this state. Any resident or nonresident whose operator's or chauffeur's license or right or privilege to operate a motor vehicle in this state has been suspended or revoked as provided in this chapter shall not operate a motor vehicle in this state under a license, permit, or registration certificate issued by any other jurisdiction or otherwise during such suspension or after such revocation until a new license is obtained when and as permitted under this chapter.

History: En. Sec. 35, Ch. 267, L. 1947; R.C.M. 1947, 31-151.

61-5-211. Right of appeal to court. Any person denied a license or whose license had been canceled, suspended, or revoked by the division except where such cancellation or revocation is mandatory under the provisions of this chapter shall have the right to file a petition within 30 days thereafter for a hearing in the matter in the district court in the county wherein such person shall reside. Such court is hereby vested with jurisdiction and it shall be its duty to set the matter for hearing upon 30 days' written notice to the division, and thereupon to take testimony and examine into the facts of the case and to determine whether the petitioner is entitled to a license or is subject to suspension, cancellation, or revocation of license under the provisions of this chapter.

History: En. Sec. 36, Ch. 267, L. 1947; R.C.M. 1947, 31-152.

61-5-212. Driving while license suspended or revoked — penalty. (1) Any person who drives a motor vehicle on any public highway of this state at a time when his privilege so to do is suspended or revoked shall be guilty of a misdemeanor and upon conviction shall be punished by imprisonment for not less than 2 days or more than 6 months and there may be imposed in addition thereto a fine of not more than $500.

(2) The division upon receiving a record of the conviction of any person under this section upon a charge of driving a vehicle while the license of such person was suspended or revoked shall extend the period of such suspension or revocation for an additional like period.

History: **En. Sec. 39, Ch. 267, L. 1947; amd. Sec. 1, Ch. 84, L. 1959; R.C.M. 1947, 31-155.**

61-5-213. Conviction defined. For the purposes of parts 1 through 3 of this chapter and 61-11-101 and 61-11-102 the term "conviction" shall mean a final conviction. Also, a forfeiture of bail or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, shall be equivalent to a conviction.

History: **En. Sec. 29, Ch. 267, L. 1947; amd. Sec. 1, Ch. 165, L. 1957; amd. Sec. 1, Ch. 27, L. 1961; amd. Sec. 1, Ch. 386, L. 1973; amd. Sec. 3, Ch. 430, L. 1977; R.C.M. 1947, 31-145(c).**

Part 3

Miscellaneous Provisions

Part Cross-References

Special parking permits for handicapped, Title 49, ch. 4, part 3.

61-5-301. Indication on driver's license of intent to make anatomical gift. The department of justice shall provide on each operator's or chauffeur's license a space for indicating when the licensee has executed a document under 72-17-204 of intent to make a gift of all or part of his body under the Uniform Anatomical Gift Act. The department shall also furnish the licensee a means of revoking the document of gift upon the license.

History: **En. 31-135.1 by Sec. 1, Ch. 28, L. 1977; R.C.M. 1947, 31-135.1.**

61-5-302. Unlawful use of license. It is a misdemeanor for any person to:

(1) display or cause or permit to be displayed or have in his possession any canceled, revoked, suspended, fictitious, or altered operator's or chauffeur's license;

(2) lend his operator's or chauffeur's license to any other person or knowingly permit its use by another;

(3) display or represent as one's own any operator's or chauffeur's license not issued to him;

(4) fail or refuse to surrender to the division upon its lawful demand any operator's or chauffeur's license which has been suspended, revoked, or canceled;

(5) use a false or fictitious name in any application for an operator's or chauffeur's license or knowingly make a false statement or knowingly conceal a material fact or otherwise commit a fraud in any such application; or

(6) permit any unlawful use of an operator's or chauffeur's license issued to him.

History: **En. Sec. 37, Ch. 267, L. 1947; amd. Sec. 1, Ch. 70, L. 1961; R.C.M. 1947, 31-153; amd. Sec. 58, Ch. 421, L. 1979.**

61-5-303. Making false affidavit — penalty. Any person who makes any false affidavit or knowingly swears or affirms falsely to any matter or thing required by the terms of parts 1 through 3 of this chapter to be sworn to or affirmed is guilty of false swearing and upon conviction shall be punishable as provided by 45-7-202.

History: **En. Sec. 38, Ch. 267, L. 1947; R.C.M. 1947, 31-154; amd. Sec. 59, Ch. 421, L. 1979.**

61-5-304. Permitting unauthorized minor to drive. No person shall cause or knowingly permit his child or ward under the age of 18 years to drive a motor vehicle upon any highway when such minor is not authorized hereunder or in violation of any of the provisions of parts 1 through 3 of this chapter.

History: **En. Sec. 40, Ch. 267, L. 1947; R.C.M. 1947, 31-156.**

61-5-305. Employing unlicensed chauffeur. No person shall employ as a chauffeur of a motor vehicle any person not then licensed as provided by this chapter.

History: **En. Sec. 41, Ch. 267, L. 1947; R.C.M. 1947, 31-157.**

61-5-306. Renting motor vehicle to another. (1) No person shall rent a motor vehicle to any other person unless the latter person is then duly licensed hereunder or, in the case of a nonresident, then duly licensed under the laws of the state or country of his residence except a nonresident whose home state or country does not require that an operator be licensed.

(2) No person shall rent a motor vehicle to another until he has inspected the operator's or chauffeur's license of the person to whom the vehicle is to be rented and compared and verified the signature thereon with the signature of such person written in his presence.

(3) Every person renting a motor vehicle to another shall keep a record of the registration number of the motor vehicle so rented, the name and address of the person to whom the vehicle is rented, the number of the license of said latter person, and the date and place when and where said license was issued. Such record shall be open to inspection by any police officer or officer or employee of the division.

History: **En. Sec. 42, Ch. 267, L. 1947; R.C.M. 1947, 31-158.**

61-5-307. Penalty for misdemeanor. (1) It is a misdemeanor for any person to violate any of the provisions of parts 1 through 3 of this chapter and 61-11-101 unless such violation is by this chapter or other law of this state declared to be a felony.

(2) Unless another penalty is in this chapter or by the laws of this state provided, every person convicted of a misdemeanor for the violation of any provision of parts 1 through 3 of this chapter and 61-11-101 shall be punished by a fine of not more than $500 or by imprisonment for not more than 6 months or by both such fine and imprisonment.

History: **En. Sec. 43, Ch. 267, L. 1947; R.C.M. 1947, 31-159.**

61-5-308. Uniformity of interpretation. Parts 1 through 3 of this chapter and 61-11-101 and 61-11-102 shall be so interpreted and construed as to effectuate their general purpose to make uniform the law of those states which enact them.

History: **En. Sec. 44, Ch. 267, L. 1947; R.C.M. 1947, 31-160.**

Part 4

Driver License Compact

61-5-401. Driver License Compact. This part shall be known and may be cited as the "Driver License Compact".

Article I. Findings and Declaration of Policy

(1) The party states find that:

(a) the safety of their streets and highways is materially affected by the degree of compliance with state laws and local ordinances relating to the operation of motor vehicles;

(b) violation of such a law or ordinance is evidence that the violator engages in conduct which is likely to endanger the safety of persons and property;

(c) the continuance in force of a license to drive is predicated upon compliance with laws and ordinances relating to the operation of motor vehicles in whichever jurisdiction the vehicle is operated.

(2) It is the policy of each of the party states to:

(a) promote compliance with the laws, ordinances, and administrative rules relating to the operation of motor vehicles by their operators in each of the jurisdictions where such operators drive motor vehicles;

(b) make the reciprocal recognition of licenses to drive and eligibility therefor more just and equitable by considering the overall compliance with motor vehicle laws, ordinances, and administrative rules as a condition precedent to the continuance or issuance of any license by reason of which the licensee is authorized or permitted to operate a motor vehicle in any of the party states.

Article II. Definitions

As used in this compact:

(1) "state" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico;

(2) "home state" means the state which has issued and has the power to suspend or revoke the use of the license or permit to operate a motor vehicle;

(3) "conviction" means a conviction of any offense related to the use or operation of a motor vehicle which is prohibited by state law, municipal ordinance, or administrative rule, or a forfeiture of bail, bond, or other security deposited to secure appearance by a person charged with having committed any such offense, and which conviction or forfeiture is required to be reported to the licensing authority.

Article III. Reports of Conviction

The licensing authority of a party state shall report each conviction of a person from another party state occurring within its jurisdiction to the licensing authority of the home state of the licensee. Such report shall clearly identify the person convicted; describe the violation specifying the section of the statute, code, or ordinance violated; identify the court in which action was taken; indicate whether a plea of guilty or not guilty was entered or the conviction was a result of the forfeiture of bail, bond, or other security; and include any special findings made in connection therewith.

Article IV. Effect of Conviction

(1) The licensing authority in the home state, for the purposes of suspension, revocation, or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported, pursuant to Article III of this compact, as it would if such conduct had occurred in the home state, in the case of convictions for:

(a) manslaughter or negligent homicide resulting from the operation of a motor vehicle;

(b) driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug, or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle;

(c) any felony in the commission of which a motor vehicle is used;

(d) failure to stop and render aid in the event of a motor vehicle accident resulting in the death or personal injury of another.

(2) As to other convictions, reported pursuant to Article III, the licensing authority in the home state shall give such effect to the conduct as is provided by the laws of the home state.

(3) If the laws of a party state do not provide for offenses or violations denominated or described in precisely the words employed in subdivision (1) of this article, such party state shall construe the denominations and descriptions appearing in subdivision (1) hereof as being applicable to and identifying those offenses or violations of a substantially similar nature, and the laws of such party state shall contain such provisions as may be necessary to ensure that full force and effect is given to this article.

Article V. Applications for New Licenses

Upon application for a license to drive, the licensing authority in a party state shall ascertain whether the applicant has ever held, or is the holder of a license to drive issued by any other party state. The licensing authority in the state where application is made shall not issue a license to drive to the applicant if:

(1) the applicant has held such a license, but the same has been suspended by reason, in whole or in part, of a violation and if such suspension period has not terminated;

(2) the applicant has held such a license, but the same has been revoked by reason, in whole or in part, of a violation and if such revocation has not terminated, except that after the expiration of 1 year from the date the license was revoked, such person may make application for a new license if permitted by law. The licensing authority may refuse to issue a license to any such applicant if, after investigation, the licensing authority determines that it will not be safe to grant to such person the privilege of driving a motor vehicle on the public highways.

(3) the applicant is the holder of a license to drive issued by another party state and currently in force unless the applicant surrenders such license.

Article VI. Applicability of Other Laws

Except as expressly required by provisions of this compact, nothing contained herein shall be construed to affect the right of any party state to apply any of its other laws relating to licenses to drive to any person or circumstance or to invalidate or prevent any driver license agreement or other cooperative arrangement between a party state and a nonparty state.

Article VII. Compact Administrator and Interchange of Information

(1) The head of the licensing authority of each party state shall be the administrator of this compact for his state. The administrators, acting jointly, shall have the power to formulate all necessary and proper procedures for the exchange of information under this compact.

(2) The administrator of each party state shall furnish to the administrator of each other party state any information or documents reasonably necessary to facilitate the administration of this compact.

Article VIII. Entry Into Force and Withdrawal

(1) This compact shall enter into force and become effective as to any state when it has enacted the same into law.

(2) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until 6 months after the executive head of the withdrawing state has given notice of the withdrawal to the executive heads of all other party states. No withdrawal shall affect the validity or applicability by the licensing authorities of states remaining party to the compact of any report of conviction occurring prior to the withdrawal.

Article IX. Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: En. Sec. 1, Ch. 154, L. 1963; R.C.M. 1947, 31-163.

61-5-402. Division as licensing authority — information and documents to be furnished. As used in the compact, the term "licensing authority" with reference to this state shall mean the division of motor vehicles. Said division shall furnish to the appropriate authorities of any other party state any information or documents reasonably necessary to facilitate the administration of Articles III, IV, and V of the compact.

History: En. Sec. 2, Ch. 154, L. 1963; R.C.M. 1947, 31-164.

61-5-403. Reimbursement of compact administrator. The compact administrator provided for in Article VII of the compact shall not be entitled to any additional compensation on account of his service as such administrator but shall be entitled to expenses incurred in connection with his duties and responsibilities as such administrator in the same manner as for expenses incurred in connection with any other duties or responsibilities of his office or employment.

History: En. Sec. 3, Ch. 154, L. 1963; R.C.M. 1947, 31-165.

61-5-404. Governor as executive head. As used in the compact, with reference to this state, the term "executive head" shall mean the governor.

History: En. Sec. 4, Ch. 154, L. 1963; R.C.M. 1947, 31-166.

61-5-405. Offenses furnishing ground for suspension or revocation of license. (1) Items enumerated in Article IV(1), subsections (a), (b), (c), and (d) of 61-5-401 refer specifically to 45-5-103, 45-5-104, 61-8-401, 45-2-101(21), and 61-7-103, respectively.

(2) In addition to convictions mentioned above the division, for the purpose of suspension, revocation, or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported as it would if such conduct had occurred in this state for:

(a) convictions of perjury or the making of a false affidavit relating to the ownership or operation of a motor vehicle (61-5-303); and

(b) three convictions of reckless driving committed within a period of 12 months (61-8-301).

History: En. Sec. 6, Ch. 154, L. 1963; R.C.M. 1947, 31-168; amd. Sec. 98, Ch. 421, L. 1979; amd. Sec. 8, Ch. 485, L. 1981.

Compiler's Comments

1981 Amendment: Changed internal reference to section 45-2-101 in subsection (1) to reflect amendment of that section.

Effective Date: Section 10, Ch. 485, L. 1981, provided: "This act is effective on passage and approval." Approved April 21, 1981.

61-5-406. Review of administrative actions. Any act or omission of any official or employee of this state done or omitted pursuant to, or in enforcing, the provisions of the Driver License Compact shall be subject to review pursuant to the provisions of 61-5-211, but any review of the validity of any conviction reported pursuant to the compact shall be limited to establishing the identity of the person so convicted.

History: En. Sec. 8, Ch. 154, L. 1963; R.C.M. 1947, 31-169.

CHAPTER 6

RESPONSIBILITY OF VEHICLE USERS AND OWNERS

Part 1 — Financial Responsibility

Section

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Chapter Cross-References

Replacement value of motor vehicle, 27-1-306.

Part 1

Financial Responsibility

61-6-101. Short title. This part may be cited as the "Motor Vehicle Safety-Responsibility Act".

History: En. Sec. 41, Ch. 204, L. 1951; R.C.M. 1947, 53-457.

61-6-102. Definitions. The following words and phrases, when used in this part, have the meanings respectively ascribed to them in this section except in those instances where the context clearly indicates a different meaning:

(1) "Judgment" means any judgment that has become final by expiration without appeal of the time within which an appeal might have been perfected or by final affirmation on appeal rendered by a court of competent jurisdiction of any state or of the United States upon a cause of action arising out of the ownership, maintenance, or use of any motor vehicle, for damages, including damages for care and loss of services, because of bodily injury to or death of any person or for damages because of injury to or destruction of property, including the loss of use thereof, or upon a cause of action on an agreement of settlement for such damages.

(2) "License" means any license, temporary instruction permit, or temporary license issued under the laws of this state pertaining to the licensing of persons to operate motor vehicles.

(3) "Nonresident's operating privilege" means the privilege conferred upon a nonresident by the laws of this state pertaining to the operation by him of a motor vehicle or the use of a motor vehicle owned by him in this state.

(4) "Proof of financial responsibility" means proof of ability to respond in damages for liability on account of accidents occurring subsequent to the effective date of said proof, arising out of the ownership, maintenance, or use of a motor vehicle.

(5) "State" means any state, territory, or possession of the United States, the District of Columbia, or any province of the Dominion of Canada.

History: En. Sec. 1, Ch. 204, L. 1951; amd. Sec. 1, Ch. 30, L. 1967; R.C.M. 1947, 53-418(part); amd. Sec. 60, Ch. 421, L. 1979.

61-6-103. Motor vehicle liability policy defined. (1) A "motor vehicle liability policy" as said term is used in this part shall mean an owner's or operator's policy of liability insurance, certified as provided in 61-6-133 or 61-6-134 as proof of financial responsibility and issued, except as otherwise provided in 61-6-134, by an insurance carrier duly authorized to transact business in this state, to or for the benefit of the person named therein as insured.

(2) Such owner's policy of liability insurance shall:

(a) designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby to be granted; and

(b) insure the person named therein and any other person, as insured, using any such motor vehicle or motor vehicles with the express or implied permission of such named insured, against loss from the liability imposed by law for damages arising out of the ownership, maintenance, or use of such motor vehicle or motor vehicles within the United States of America or the Dominion of Canada, subject to limits exclusive of interest and costs, with respect to each such motor vehicle, as follows:

(i) $25,000 because of bodily injury to or death of one person in any one accident and subject to said limit for one person;

(ii) $50,000 because of bodily injury to or death of two or more persons in any one accident; and

(iii) $5,000 because of injury to or destruction of property of others in any one accident.

(3) Such operator's policy of liability insurance shall insure the person named as insured therein against loss from the liability imposed upon him by law for damages arising out of the use by him of any motor vehicle not owned by him, within the same territorial limits and subject to the same limits of liability as are set forth above with respect to an owner's policy of liability insurance.

(4) Such motor vehicle liability policy shall state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period, and the limits of liability and shall contain an agreement or be endorsed that insurance is provided thereunder in accordance with the coverage defined in this part as respects bodily injury and death or property damage, or both, and is subject to all the provisions of this part.

(5) Such motor vehicle liability policy need not insure any liability under any workers' compensation law or any liability on account of bodily injury to or death of an employee of the insured while engaged in the employment, other than domestic, of the insured or while engaged in the operation, maintenance, or repair of any such motor vehicle or any liability for damage to property owned by, rented to, in charge of, or transported by the insured.

(6) Every motor vehicle liability policy shall be subject to the following provisions which need not be contained therein:

(a) The liability of the insurance carrier with respect to the insurance required by this part shall become absolute whenever injury or damage covered by said motor vehicle liability policy occurs. Said policy may not be canceled or annulled as to such liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage. No statement made by the insured or on his behalf and no violation of said policy shall defeat or void said policy.

(b) The satisfaction by the insured of a judgment for such injury or damage shall not be a condition precedent to the right or duty of the insurance carrier to make payment on account of such injury or damage.

(c) The insurance carrier shall have the right to settle any claim covered by the policy, and if such settlement is made in good faith, the amount thereof shall be deductible from the limits of liability specified in subsection (2)(b) of this section.

(d) The policy, the written application therefor, if any, and any rider or endorsement which does not conflict with the provisions of the part shall constitute the entire contract between the parties.

(7) No motor vehicle policy shall be subject to cancellation, termination, or premium increase, due to injury or damage incurred by the insured or operator unless the insured or operator be found to have violated a traffic law or ordinance of the state or a city, be found negligent or contributorily negligent in a court of law, or by the arbitration proceedings contained in chapter 5 of Title 27, or pays damages to another party whether by settlement or otherwise. In no event may a premium be increased during the term of the policy unless there is a change in exposure.

(8) Any policy which grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy and such excess

or additional coverage shall not be subject to the provisions of this part. With respect to a policy which grants such excess or additional coverage the term "motor vehicle liability policy" shall apply only to that part of the coverage which is required by this section.

(9) Any motor vehicle liability policy may provide that the insured shall reimburse the insurance carrier for any payment the insurance carrier would not have been obligated to make under the terms of the policy except for the provisions of this part.

(10) Any motor vehicle liability policy may provide for the prorating of the insurance thereunder with other valid and collectable insurance.

(11) The requirements for a motor vehicle liability policy may be fulfilled by the policies of one or more insurance carriers which policies together meet such requirements.

(12) Any binder issued pending the issuance of a motor vehicle liability policy shall be deemed to fulfill the requirements for such a policy.

(13) A reduced limits endorsement shall not be issued by any company to be attached to any policy issued in compliance with this section.

History: En. Sec. 21, Ch. 204, L. 1951; amd. Sec. 4, Ch. 30, L. 1967; amd. Sec. 1, Ch. 177, L. 1973; amd. Sec. 1, Ch. 260, L. 1973; amd. Sec. 1, Ch. 295, L. 1974; amd. Sec. 1, Ch. 526, L. 1975; R.C.M. 1947, 53-438.

61-6-104. Uniformity of interpretation. This part shall be so interpreted and construed as to effectuate its general purpose to make uniform the laws of those states which enact it.

History: En. Sec. 39, Ch. 204, L. 1951; R.C.M. 1947, 53-456.

61-6-105. Division to administer law and make rules. The division shall administer and enforce the provisions of this part and may make rules necessary for its administration and may provide for hearings upon request of persons aggrieved by orders or acts of the division under the provisions of this part.

History: En. Sec. 2, Ch. 204, L. 1951; amd. Sec. 1, Ch. 164, L. 1957; R.C.M. 1947, 53-419(a), (b); amd. Sec. 61, Ch. 421, L. 1979.

61-6-106. Appeal to court. (1) At any time within 60 days after the rendition of any decision or order by the division under the provisions of this part, any party in interest may appeal to the district court of the judicial district of the state of Montana, in and for any county wherein any party in interest may reside or in which any party in interest which is a corporation may have its principal office, or place of business, and said appeal may be for the purpose of having the lawfulness of any order, decision, or act of the division inquired into and determined. The court shall determine whether the filing of an appeal shall operate as a stay of any order or decision of the division.

(2) Said appeal shall be taken by serving a written notice of said appeal upon the division, which said service shall be made by delivering a copy of such notice to the division and filing the original thereof with the clerk of the court to which said appeal is taken. A copy of such notice must also be served upon all other parties in interest, if there be any, by mailing the same to said parties in interest to such addresses of such parties as such parties shall have left with the division. If such parties shall have left no address

with the division, then no service on such parties shall be required. The order of filing and service of said notice is immaterial.

(3) Immediately upon service upon said division of said notice, the division shall certify to said district court a complete record of all proceedings had by it with reference to the decision, order, or act appealed from, together with all official forms or documents in the possession of said division pertaining to said decision, order, or act and all correspondence and other written matter in the possession of said division pertaining to said decision, order, or act, with the clerk of the district court.

(4) Immediately upon the return of such certified matter, the district court shall fix a day for the hearing of said appeal and shall cause notice to be served upon the division and upon the appellant and also upon any other parties in interest upon whom service was required under the provisions of this section. The court may upon the hearing for a good cause shown permit evidence in addition to the matter certified by the division to the court, but in the absence of such permission from the court, the cause shall be heard on the matter certified to the court by the division. The trial of the matter shall be de novo, without a jury, and upon such trial the court shall determine whether or not the division regularly pursued its authority, whether or not the findings of the division ought to be sustained, and whether or not such findings are reasonable under all circumstances of the case. The division and each party in interest shall have the right to appear in the proceeding.

(5) If the court shall find from such trial, as aforesaid, that the findings and conclusions of the division are not in accordance with either the facts or the law or that they ought to be other or different from those made by the division or that any finding and conclusion or any decision, order, act, rule, or requirement of the division is unreasonable, the court shall set aside such finding, conclusion, decision, order, act, rule, or requirement of said division or shall modify or change the same as law and justice shall require, and the court shall also make and enter any finding, conclusion, order, or judgment that shall be required or shall be legal and proper in the premises. Either the division or the appellant or any other party in interest, if there be any, may appeal to the supreme court from any final order, judgment, or decree of said district court, which said appeal shall be taken in like manner as appeals are now taken in other civil actions to the supreme court.

(6) Upon such appeal, the supreme court shall make such orders in reference to a stay of proceedings as it finds to be just in the premises and may stay the operation of any order, judgment, or decree of said district court without requiring any bond or undertaking from the applicant for such stay. When any such cause is so appealed, it shall have precedence upon the calendar of said supreme court upon the record made in said district court and upon the matters certified to or which ought to have been certified by said division to said district court, and judgment and decree shall be entered therein as expeditiously as possible.

History: En. Sec. 2, Ch. 204, L. 1951; amd. Sec. 1, Ch. 164, L. 1957; R.C.M. 1947, 53-419(c).

61-6-107. Division to furnish operating record. The division shall upon request furnish any person a certified abstract of the operating record of any person subject to the provisions of this part, which abstract shall also fully designate the motor vehicles, if any, registered in the name of such person and if there shall be no record of any conviction of such person of violating any law relating to the operation of a motor vehicle or of any injury or damage caused by such person, the division shall so certify. A fee of $2 shall be paid for said certified abstract.

History: **En. Sec. 3, Ch. 204, L. 1951; amd. Sec. 17, Ch. 121, L. 1965; amd. Sec. 1, Ch. 381, L. 1971; R.C.M. 1947, 53-420.**

61-6-108. Matters not to be evidence in civil suits. Neither the action taken by the division pursuant to this part nor the findings, if any, of the division upon which such action is based shall be referred to in any way or be any evidence of the negligence or due care of either party at the trial of any action at law to recover damages.

History: **En. Sec. 11, Ch. 204, L. 1951; amd. Sec. 1, Ch. 184, L. 1974; R.C.M. 1947, 53-428.**

61-6-109. Exceptions. This part shall not apply with respect to any motor vehicle owned by the United States, this state, or any political subdivision of this state or any municipality therein; or, except for 61-6-139, with respect to any motor vehicle which is subject to the provisions of 69-12-402, requiring insurance or other security.

History: **En. Sec. 33, Ch. 204, L. 1951; amd. Sec. 3, Ch. 184, L. 1974; R.C.M. 1947, 53-450.**

61-6-110. Other relief not precluded. Nothing in this part shall be construed as preventing the plaintiff in any action at law from relying for relief upon the other processes provided by law.

History: **En. Sec. 38, Ch. 204, L. 1951; R.C.M. 1947, 53-455.**

61-6-111. Transfer of registration to defeat purpose of part prohibited. If an owner's registration has been suspended hereunder, such registration shall not be transferred nor the motor vehicle in the respect of which such registration was issued registered in any other name until the division is satisfied that such transfer of registration is proposed in good faith and not for the purpose or with the effect of defeating the purposes of this part. Nothing in this section shall in anywise affect the rights of any conditional vendor, chattel mortgagee, or lessor of a motor vehicle registered in the name of another as owner who becomes subject to the provisions of this section.

History: **En. Sec. 30, Ch. 204, L. 1951; R.C.M. 1947, 53-447.**

61-6-112. Surrender of license and registration. Any person whose license or registration shall have been suspended as herein provided, or whose policy of insurance or bond, when required under this part, shall have been canceled or terminated, or who shall neglect to furnish other proof upon request of the division shall immediately return his license and registration to the division. If any person shall fail to return to the division the license or registration as provided herein, the division shall forthwith direct any peace officer or highway patrolman to secure possession thereof and to return the same to the division.

History: **En. Sec. 31, Ch. 204, L. 1951; amd. Sec. 1, Ch. 107, L. 1957; R.C.M. 1947, 53-448.**

61-6-113 through 61-6-120 reserved.

61-6-121. Courts to report nonpayment of judgments. (1) Whenever any person fails within 60 days to satisfy any judgment, upon the written request of the judgment creditor or his attorney, it shall be the duty of the clerk of the court, or of the judge of a court which has no clerk, in which any such judgment is rendered within this state to forward to the division immediately after the expiration of said 60 days a certified copy of such judgment.

(2) If the defendant named in any certified copy of a judgment reported to the division is a nonresident, the division shall transmit a certified copy of the judgment to the official in charge of the issuance of licenses and registration certificates of the state of which the defendant is a resident.

History: En. Sec. 12, Ch. 204, L. 1951; R.C.M. 1947, 53-429.

61-6-122. Suspension for nonpayment of judgments — exceptions. (1) The division, upon the receipt of a certified copy of a judgment, shall forthwith suspend the license and registration and any nonresident's operating privilege of any person against whom such judgment was rendered, except as hereinafter otherwise provided in this section and in 61-6-125.

(2) If the judgment creditor consents in writing, in such form as the division may prescribe, that the judgment debtor be allowed license and registration or nonresident's operating privilege, the same may be allowed by the division, in its discretion, for 6 months from the date of such consent and thereafter until such consent is revoked in writing notwithstanding default in the payment of such judgment, or of any installments thereof prescribed in 61-6-125, provided the judgment debtor furnishes proof of financial responsibility.

History: En. Sec. 13, Ch. 204, L. 1951; R.C.M. 1947, 53-430.

61-6-123. Suspension to continue until judgments paid and proof given — maximum period of suspension. Such license and nonresident's operating privilege shall remain so suspended and shall not be renewed, nor shall any such license be thereafter issued in the name of such person, including any such person not previously licensed, unless and until every such judgment is stayed, satisfied in full or to the extent hereinafter provided, and until the person gives proof of financial responsibility subject to the exemptions stated in 61-6-122 and 61-6-125 or 6 years have passed from date judgment was first entered as provided in 25-9-301 and the person has complied with 61-6-301 and 61-6-302.

History: En. Sec. 14, Ch. 204, L. 1951; amd. Sec. 1, Ch. 437, L. 1973; R.C.M. 1947, 53-431; amd. Sec. 5, Ch. 592, L. 1979.

61-6-124. Satisfaction of judgments. (1) Judgments herein referred to shall, for the purposes of this part only, be considered satisfied:

(a) when $25,000 has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of one person as the result of any one accident;

(b) when, subject to the limit of $25,000 because of bodily injury to or death of one person, the sum of $50,000 has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of two or more persons as the result of any one accident; or

(c) when $5,000 has been credited upon any judgment or judgments rendered in excess of that amount because of injury to or destruction of property of others as a result of any one accident.

(2) Payments made in settlement of any claims because of bodily injury, death, or property damage arising from a motor vehicle accident shall be credited in reduction of the amounts provided for in this section.

History: En. Sec. 15, Ch. 204, L. 1951; amd. Sec. 3, Ch. 30, L. 1967; R.C.M. 1947, 53-432; amd. Sec. 62, Ch. 421, L. 1979.

61-6-125. Installment payment of judgments — default. (1) A judgment debtor upon due notice to the judgment creditor may apply to the court in which such judgment was rendered for the privilege of paying such judgment in installments and the court, in its discretion and without prejudice to any other legal remedies which the judgment creditor may have, may so order and fix the amounts and times of payment of the installments.

(2) The division shall not suspend a license, or require the suspension of a registration or a nonresident's operating privilege, and shall restore any license and the registration or nonresident's operating privilege suspended following nonpayment of a judgment, when the judgment debtor gives proof of financial responsibility and obtains such an order permitting the payment of such judgment in installments, and while the payment of any said installment is not in default.

(3) In the event the judgment debtor fails to pay any installment as specified by such order, then upon notice of such default, the division shall forthwith suspend the license and the registration or nonresident's operating privilege of the judgment debtor until such judgment is satisfied, as provided in this part.

History: En. Sec. 16, Ch. 204, L. 1951; R.C.M. 1947, 53-433.

61-6-126 through 61-6-130 reserved.

61-6-131. When proof of financial responsibility required. (1) Whenever the division under any of the laws of this state revokes the license of any person upon receiving record of a conviction or a forfeiture of bail, the division shall also suspend the registration for all motor vehicles registered in the name of such person, except that the division shall not suspend such registration, unless otherwise required by law, if such person has previously given or shall immediately give and thereafter maintain proof of financial responsibility with respect to all motor vehicles registered by such person.

(2) Such license shall remain revoked and such registration shall remain suspended and shall not at any time thereafter be renewed, nor shall any license be thereafter issued to such person, nor shall any motor vehicle be thereafter registered in the name of such person until permitted under the motor vehicle laws of this state and not then unless and until he shall give and thereafter maintain proof of financial responsibility.

(3) If a person is not licensed, but by the final order or judgment is convicted of or forfeits any bail or collateral deposited to secure an appearance

for trial for any offense requiring the revocation of a license, no license shall be thereafter issued to such person and no motor vehicle shall continue to be registered or thereafter be registered in the name of such person until he shall give and thereafter maintain proof of financial responsibility.

(4) Whenever the division revokes a nonresident's operating privilege by reason of a conviction or forfeiture of bail, such privilege shall remain so revoked unless such person shall have previously given or shall immediately give and thereafter maintain proof of financial responsibility.

History: **En. Sec. 17, Ch. 204, L. 1951; amd. Sec. 1, Ch. 236, L. 1961; R.C.M. 1947, 53-434.**

61-6-132. Alternate methods of giving proof. (1) Proof of financial responsibility when required under this part with respect to a motor vehicle or with respect to a person who is not the owner of a motor vehicle may be given by filing:

(a) a certificate of insurance as provided in 61-6-133 or 61-6-134;

(b) a bond as provided in 61-6-137;

(c) a certificate or deposit of money or securities as provided in 61-6-138; or

(d) a certificate of self-insurance, as provided in 61-6-143, supplemented by an agreement by the self-insurer that, with respect to accidents occurring while the certificate is in force, he will pay the same judgments and in the same amounts that an insurer would have been obligated to pay under an owner's motor vehicle liability policy if it had issued such a policy to said self-insurer.

(2) No motor vehicle shall be or continue to be registered in the name of any person required to file proof of financial responsibility unless such proof shall be furnished for such motor vehicle.

History: **En. Sec. 18, Ch. 204, L. 1951; R.C.M. 1947, 53-435.**

61-6-133. Certificate of insurance as proof. (1) Proof of financial responsibility may be furnished by filing with the division the written certificate of any insurance carrier duly authorized to do business in this state certifying that there is in effect a motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. Such certificate shall give the effective date of such motor vehicle liability policy, which date shall be the same as the effective date of the certificate, and shall designate by explicit description or by appropriate reference all motor vehicles covered thereby, unless the policy is issued to a person who is not the owner of a motor vehicle.

(2) No motor vehicle shall be or continue to be registered in the name of any person required to file proof of financial responsibility unless such motor vehicle is so designated in such a certificate.

History: **En. Sec. 19, Ch. 204, L. 1951; R.C.M. 1947, 53-436.**

61-6-134. Certificate furnished by nonresident as proof. (1) The nonresident owner of a motor vehicle not registered in this state may give proof of financial responsibility by filing with the division a written certificate or certificates of an insurance carrier authorized to transact business in the state in which the motor vehicle or motor vehicles described in such certificate is registered, or if such nonresident does not own a motor vehicle, then in the state in which the insured resides, provided such certificate otherwise conforms to the provisions of this part, and the division shall accept the same upon condition that said insurance carrier complies with the following provisions with respect to the policies so certified:

(a) Said insurance carrier shall execute a power of attorney authorizing the division to accept service on its behalf of notice or process in any action arising out of a motor vehicle accident in this state.

(b) Said insurance carrier shall agree in writing that such policies shall be deemed to conform with the laws of this state relating to the terms of motor vehicle liability policies issued herein.

(2) If any insurance carrier not authorized to transact business in this state, which has qualified to furnish proof of financial responsibility, defaults in any said undertaking or agreements, the division shall not thereafter accept as proof any certificate of said carrier whether theretofore filed or thereafter tendered as proof, so long as such default continues.

History: En. Sec. 20, Ch. 204, L. 1951; R.C.M. 1947, 53-437.

61-6-135. Notice of cancellation or termination of certified policy. When an insurance carrier has certified a motor vehicle liability policy under 61-6-133 or a policy under 61-6-134, the insurance so certified shall not be canceled or terminated until at least 10 days after a notice of cancellation or termination of the insurance so certified shall be filed in the office of the division, except that such a policy subsequently procured and certified shall on the effective date of its certification terminate the insurance previously certified with respect to any motor vehicle designated in both certificates.

History: En. Sec. 22, Ch. 204, L. 1951; R.C.M. 1947, 53-439.

61-6-136. Other policies not affected. (1) This part shall not be held to apply to or affect policies of automobile insurance against liability which may now or hereafter be required by any other law of this state, and such policies, if they contain an agreement or are endorsed to conform to the requirements of this part, may be certified as proof of financial responsibility under this part.

(2) This part shall not be held to apply to or affect policies insuring solely the insured named in the policy against liability resulting from the maintenance or use by persons in the insured's employ or on his behalf of motor vehicles not owned by the insured.

History: En. Sec. 23, Ch. 204, L. 1951; R.C.M. 1947, 53-440.

61-6-137. Bond as proof of responsibility. (1) Proof of financial responsibility may be furnished by filing with the division the bond of a surety company duly authorized to transact business in the state or a bond with at least two individual sureties each owning real estate within this state and together having equities equal in value to at least twice the amount of such bond, which real estate shall be scheduled in the bond approved by a judge of a court of record. The bond shall be conditioned for payments in amounts and under the same circumstances as would be required in a motor vehicle liability policy and shall not be cancelable except after 10 days' written notice to the division. Upon the filing of notice to this effect by the division in the office of the county clerk and recorder of the county wherein such real estate is located, the bond shall constitute a lien in favor of the state upon the real estate so scheduled of any surety, which lien shall exist in favor of any holder of a judgment against the person who has filed the bond.

(2) The person in whose favor the lien exists may, for his own use and benefit and at his sole expense, bring an action or actions in the name of the state against the company or persons executing the bond, including an action or proceeding to foreclose any lien that may exist upon the real estate of any person who has executed such bond. The provisions of the Montana Rules of Civil Procedure, except insofar as they are inconsistent with the provisions of this part, are applicable to and constitute the rules of practice in the foreclosure actions or proceedings. The provisions of the Montana Rules of Civil Procedure relative to new trials and appeals, except insofar as they are inconsistent with the provisions of this part, apply to the actions or proceedings.

History: En. Sec. 24, Ch. 204, L. 1951; R.C.M. 1947, 53-441; amd. Sec. 63, Ch. 421, L. 1979.

61-6-138. Money or securities as proof of responsibility. (1) Proof of financial responsibility may be evidenced by the certificate of the state treasurer that the person named therein has deposited with him $11,000 in cash, or securities such as may legally be purchased by savings banks or for trust funds of a market value of $11,000. The state treasurer shall not accept any such deposit and issue a certificate therefor and the division shall not accept such certificate unless accompanied by evidence that there are no unsatisfied judgments of any character against the depositor in the county where the depositor resides.

(2) Such deposit shall be held by the state treasurer to satisfy, in accordance with the provisions of this part, any execution on a judgment issued against such person making the deposit, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, resulting from the ownership, maintenance, use, or operation of a motor vehicle after such deposit was made. Money or securities so deposited shall not be subject to attachment or execution unless such attachment or execution shall arise out of a suit for damages as aforesaid.

History: En. Sec. 25, Ch. 204, L. 1951; R.C.M. 1947, 53-442.

61-6-139. Owner permitted to give proof for others. Whenever any person required to give proof of financial responsibility hereunder is or later becomes an operator in the employ of any owner, or is or later becomes a member of the immediate family or household of the owner, the division shall accept proof given by such owner in lieu of proof by such other person to permit such other person to operate a motor vehicle for which the owner has given proof as herein provided. The division shall designate the restrictions imposed by this section on the face of such person's license.

History: En. Sec. 26, Ch. 204, L. 1951; R.C.M. 1947, 53-443.

61-6-140. Substitution of proof of responsibility. The division shall consent to the cancellation of any bond or certificate of insurance or the division shall direct and the state treasurer shall return any money or securities to the person entitled thereto upon the substitution and acceptance of other adequate proof of financial responsibility pursuant to this part.

History: En. Sec. 27, Ch. 204, L. 1951; R.C.M. 1947, 53-444.

61-6-141. Other proof — when required. Whenever any proof of financial responsibility filed under the provisions of this part no longer fulfills the purposes for which required, the division shall for the purpose of this part require other proof as required by this part and shall suspend the license and registration or the nonresident's operating privilege pending the filing of such proof.

History: En. Sec. 28, Ch. 204, L. 1951; R.C.M. 1947, 53-445.

61-6-142. Duration of proof — when money or securities may be canceled or returned. (1) The division shall direct and the state treasurer shall return to the person entitled thereto any money or securities deposited pursuant to this part as proof of financial responsibility, or the division shall waive the requirement of filing proof under this part, in any of the following events:

(a) at any time after 3 years from the date such proof was required when during the 3-year period preceding the request the division has not received record of a conviction or a forfeiture of bail which would require or permit the suspension or revocation of the license, registration, or nonresident's operating privilege of the person by or for whom such proof was furnished;

(b) in the event of the death of the person on whose behalf such proof was filed or the permanent incapacity of such person to operate a motor vehicle; or

(c) in the event the person who has given proof surrenders his license and registration to the division.

(2) However, the division shall not consent to the return of any money or securities in the event any action for damages upon a liability covered by such proof is then pending or any judgment upon any such liability is then unsatisfied, or in the event the person who has deposited such money or securities has, within 1 year immediately preceding such request been involved as an operator or owner in any motor vehicle accident resulting in injury or damage to the person or property of others. An affidavit of the applicant as to the nonexistence of such facts, or that he has been released from all of his liability, or has been finally adjudicated not to be liable for such injury or damage, shall be sufficient evidence thereof in the absence of evidence to the contrary in the records of the division.

(3) Whenever any person whose proof has been canceled or returned under subsection (1)(c) of this section applies for a license or registration within a period of 3 years from the date proof was originally required, any such application shall be refused unless the applicant complies with the insurance or bond requirements under 61-6-301 and 61-6-302.

History: En. Sec. 29, Ch. 204, L. 1951; R.C.M. 1947, 53-446; amd. Sec. 6, Ch. 592, L. 1979.

61-6-143. Self-insurers. (1) Any person in whose name more than 25 motor vehicles are registered may qualify as a self-insurer by obtaining a certificate of self-insurance issued by the division as provided in subsection (2) of this section.

(2) The division may, in its discretion, upon the application of such a person, issue a certificate of self-insurance when it is satisfied that such person is possessed and will continue to be possessed of ability to pay judgments obtained against such person.

(3) Upon not less than 5 days' notice and a hearing pursuant to such notice, the division may upon reasonable grounds cancel a certificate of self-insurance. Failure to pay any judgment within 30 days after such judgment shall have become final shall constitute a reasonable ground for the cancellation of a certificate of self-insurance.

History: En. Sec. 34, Ch. 204, L. 1951; R.C.M. 1947, 53-451.

61-6-144. Assigned risk plans. After consultation with insurance companies authorized to issue automobile liability policies in this state, the commissioner of insurance shall approve a reasonable plan or plans for the equitable apportionment among such companies of applicants for such policies and for motor vehicle liability policies who are in good faith entitled to but are unable to procure such policies through ordinary methods. When any such plan has been approved, all such insurance companies shall subscribe thereto and participate therein. Any applicant for any such policy, any person insured under any such plan, and any insurance company affected, may appeal to the commissioner of insurance from any ruling or decision of the manager or committee designated to operate such plan. Any person aggrieved hereunder by any order or act of the commissioner of insurance may, within 10 days after notice thereof, file a petition in the district court of Lewis and Clark County for a review thereof. The court shall summarily hear the petition and may make any appropriate order or decree.

History: En. Sec. 35, Ch. 204, L. 1951; R.C.M. 1947, 53-452.

61-6-145 through 61-6-150 reserved.

61-6-151. Violations — penalties. (1) Any person who shall forge or, without authority, sign any evidence of proof of financial responsibility or who files or offers for filing any such evidence of proof knowing or having reason to believe that it is forged or signed without authority shall be fined not more than $1,000 or imprisoned for not more than 1 year or both.

(2) Any person whose license or registration or nonresident's operating privilege has been suspended or revoked under this part and who, during such suspension or revocation drives any motor vehicle upon any highway or knowingly permits any motor vehicle owned by such person to be operated by another upon any highway, except as permitted under this part, shall be fined not more than $500 or imprisoned not exceeding 6 months or both.

(3) Any person willfully failing to return license or registration as required in 61-6-112 shall be fined not more than $500 or imprisoned not to exceed 30 days or both.

(4) Any person who shall violate any provision of this part for which no penalty is otherwise provided shall be fined not more than $500 or imprisoned not more than 90 days or both.

History: (1) thru (3)En. Sec. 32, Ch. 204, L. 1951; amd. Sec. 2, Ch. 184, L. 1974; Sec. 53-449, R.C.M. 1947; (4)En. Sec. 43, Ch. 204, L. 1951; Sec. 53-458, R.C.M. 1947; R.C.M. 1947, 53-449, 53-458.

Part 2

Liability of Vehicle Owner

61-6-201. Liability of owner for negligence of employee driver. The owner of every vehicle running or traveling upon any highway or road for the conveyance of passengers is liable for all damage to person or property done by any person in his employment as a driver while driving such vehicle, whether done willfully or negligently or otherwise, in the same manner as such driver would be liable.

History: En. Sec. 5, Ch. 8, Ch. 72, L. 1913; re-en. Sec. 5, Ch. 8, Ch. 141, L. 1915; re-en. Sec. 1748, R.C.M. 1921; Cal. Pol. C. Sec. 2936; re-en. Sec. 1748, R.C.M. 1935; R.C.M. 1947, 32-1112.

Part 3

Mandatory Liability Protection

61-6-301. Required motor vehicle insurance. (1) Every owner of a motor vehicle which is registered and operated in Montana by the owner or with his permission shall continuously provide insurance against loss resulting from liability imposed by law for bodily injury or death or damage to property suffered by any person caused by maintenance or use of a motor vehicle, as defined in 61-1-102, in an amount not less than that required by 61-6-103, or a certificate of self-insurance issued in accordance with 61-6-143.

(2) A motor vehicle owner who prefers to post an indemnity bond with the division of motor vehicles in lieu of obtaining a policy of liability insurance may do so. The bond shall guarantee that any loss resulting from liability imposed by law for bodily injury, death, or damage to property suffered by any person caused by accident and arising out of the operation, maintenance, and use of the motor vehicle sought to be registered shall be paid within 30 days after final judgment is entered establishing such liability. The indemnity bond shall guarantee payment in the amount provided for insurance under subsection (1).

(3) Any bond given in connection with this section is a continuing instrument and shall cover the period for which the motor vehicle is to be registered and operated. Such bond shall be on a form approved by the commissioner of insurance with a surety company authorized to do business in the state.

History: En. Sec. 1, Ch. 592, L. 1979.

Compiler's Comments

Severability. Sec. 7, Ch. 592, L. 1979, provided: "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

61-6-302. Proof of compliance. (1) Except as provided in subsection (2), before any applicant required to register his motor vehicle may do so, the applicant must certify to the county treasurer that he possesses an automobile liability insurance policy, a certificate of self-insurance, or a posted indemnity bond or that he is eligible for an exemption under 61-6-303 covering the motor vehicle. The certification shall be on a form prescribed by the division of motor vehicles. The division may immediately cancel the registration and license plates of the vehicle upon notification that the insurance certification was not correctly represented. Any person who intentionally provides false information on an insurance certification is guilty of unsworn falsification to authorities, punishable as provided in 45-7-203.

(2) An applicant for registration of an automobile or a truck having a rated capacity of three-quarters of a ton or less, who wishes to register the

vehicle by mail must sign a statement on the application stating that the applicant is in compliance with the financial liability requirements of 61-6-301.

(3) An owner of a motor vehicle who ceases to maintain the insurance or bond required or whose certificate of self-insurance is canceled or whose vehicle ceases to be exempt shall immediately surrender the registration and license plates for the vehicle to the county treasurer for delivery to the division and may not operate or permit operation of the vehicle in Montana until insurance has again been furnished as required and the vehicle is again registered and licensed.

(4) Every person shall carry in a motor vehicle being operated by him an insurance card approved by the division but issued by the insurance carrier to the motor vehicle owner as proof of compliance with 61-6-301. A motor vehicle operator shall exhibit the insurance card upon demand of a justice of the peace, a peace officer, a highway patrolman, or a field deputy or inspector of the division. However, no person charged with violating this subsection may be convicted if he produces in court or the office of the arresting officer proof of insurance valid at the time of his arrest.

History: En. Sec. 2, Ch. 592, L. 1979; amd. Sec. 1, Ch. 409, L. 1981; amd. Sec. 36, Ch. 614, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 409 changed "certify and display to the county treasurer" to "certify to the county treasurer that he possesses" in (1); added last sentence of (1) relating to false information; added subsection (4) relating to insurance cards.

Chapter 614 added "Except as provided in subsection (2)" to the beginning of (1); and added subsection (2).

Source: Subsection (4) is based on 61-3-115.

Effective Date: Section 66, Ch. 614, L. 1981, provided: "(1) Except as provided in subsection (2), this act is effective on January 1, 1982.

(2) Section 5 [61-3-535] is effective on passage and approval." Approved May 7, 1981.

61-6-303. Exempt vehicles. The following vehicles and their drivers are exempt from the provisions of 61-6-301:

(1) a vehicle owned by the United States government or any state or political subdivision;

(2) a vehicle for which cash, securities, or a bond has been deposited or filed with the division upon such terms and conditions providing the same benefits available under a required motor vehicle liability insurance policy;

(3) a vehicle owned by a self-insurer certified as provided in 61-6-143;

(4) an implement of husbandry or special mobile equipment that is only incidentally operated on a highway or property open to use by the public;

(5) a vehicle operated upon a highway only for the purpose of crossing such highway from one property to another;

(6) a commercial vehicle registered or proportionally registered in this and any other jurisdiction provided that vehicle is covered by a motor vehicle liability insurance policy complying with the laws of another jurisdiction in which it is registered;

(7) a motorcycle;

(8) a vehicle moved solely by human or animal power.

History: En. Sec. 3, Ch. 592, L. 1979.

61-6-304. Penalties. It is unlawful for any person to operate a motor vehicle upon highways, streets, or roadways of this state without a valid policy of liability insurance in effect in an amount not less than that provided in 61-6-301 or unless such person has been issued a certificate of self-insurance pursuant to 61-6-143 or has previously posted an indemnity bond with the division of motor vehicles as provided by 61-6-301 or is operating a vehicle exempt under 61-6-303. A violation of 61-6-301 through 61-6-304 is a misdemeanor punishable by a fine not to exceed $250.

History: **En. Sec. 4, Ch. 592, L. 1979; amd. Sec. 2, Ch. 409, L. 1981; amd. Sec. 178, Ch. 575, L. 1981.**

Compiler's Comments

1981 Amendments: Chapter 409 changed "punishable as provided in 61-3-601" to "punishable by a fine not to exceed $250" at the end of the section.

Chapter 575 substituted "61-6-143" for "[61-6-302]" and "division of motor vehicles" for "[commissioner of insurance]".

CHAPTER 7

ACCIDENTS AND ACCIDENT REPORTS

Part 1 — Uniform Accident Reporting Act

Section
61-7-101. Short title.
61-7-102. Application.
61-7-103. Accidents involving death or personal injuries.
61-7-104. Accident involving damage to vehicle.
61-7-105. Duty to give information and render aid.
61-7-106. Duty upon striking unattended vehicle.
61-7-107. Duty upon striking fixtures or other property upon a highway.
61-7-108. Immediate notice of accidents.
61-7-109. Written reports of accidents — additional information — form of report.
61-7-110. When driver unable to report.
61-7-111. Accident report forms.
61-7-112. Coroners and medical examiners to report.
61-7-113. Garages to report.
61-7-114. Accident reports confidential.
61-7-115. Division to tabulate and analyze accident reports.
61-7-116. Any incorporated city permitted to require accident reports.
61-7-117. Uniformity of interpretation.

Part 1

Uniform Accident Reporting Act

61-7-101. Short title. This part will be cited as the "Uniform Accident Reporting Act".

History: **En. Sec. 18, Ch. 210, L. 1939; R.C.M. 1947, 32-1217.**

61-7-102. Application. The provisions of this part shall apply upon highways and elsewhere throughout the state.

History: **En. Sec. 22, Ch. 263, L. 1955; R.C.M. 1947, 32-2124(part).**

61-7-103. Accidents involving death or personal injuries. (1) The driver of any vehicle involved in an accident resulting in injury to or death of any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible, but shall then forthwith return to and in every event shall remain at the scene of the accident until he has fulfilled the requirements of 61-7-105. Every such stop shall be made without obstructing traffic more than is necessary.

(2) Any person failing to stop or to comply with said requirements under such circumstances shall upon conviction be punished by imprisonment for not less than 30 days or more than 1 year or by a fine of not less than $100 or more than $5,000 or by both such fine and imprisonment.

(3) The division shall revoke the license or permit to drive of any resident and any nonresident operating privilege of any person so convicted for the period prescribed in 61-5-208.

History: En. Sec. 3, Ch. 210, L. 1939; Subd. (c) amd. Sec. 1, Ch. 212, L. 1947; amd. Sec. 2, Ch. 256, L. 1959; R.C.M. 1947, 32-1202.

61-7-104. Accident involving damage to vehicle. (1) The driver of any vehicle involved in an accident resulting only in damage to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible and shall forthwith return to and in every event shall remain at the scene of such accident until he has fulfilled the requirements of 61-7-105. Every such stop shall be made without obstructing traffic more than is necessary.

(2) Any person failing to stop or comply with said requirements under such circumstances shall be guilty of a misdemeanor.

History: En. Sec. 4, Ch. 210, L. 1939; R.C.M. 1947, 32-1203.

61-7-105. Duty to give information and render aid. The driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person shall give his name, address, and the registration number of the vehicle he is driving and shall upon request and if available exhibit his operator's or chauffeur's license to the person struck or the driver or occupant of or person attending any vehicle collided with and shall render to any person injured in such accident reasonable assistance, including the carrying, or the making of arrangements for the carrying, of such person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that such treatment is necessary or if such carrying is requested by the injured person.

History: En. Sec. 5, Ch. 210, L. 1939; R.C.M. 1947, 32-1204.

61-7-106. Duty upon striking unattended vehicle. The driver of any vehicle which collides with any vehicle which is unattended shall immediately stop and shall then and there either locate and notify the operator or owner of such vehicle of the name and address of the driver and owner of the vehicle striking the unattended vehicle or shall leave in a conspicuous place in the vehicle struck a written notice giving the name and address of the driver and of the owner of the vehicle doing the striking and a statement of the circumstances thereof.

History: En. Sec. 6, Ch. 210, L. 1939; R.C.M. 1947, 32-1205.

61-7-107. Duty upon striking fixtures or other property upon a highway. The driver of any vehicle involved in an accident resulting only in damage to fixtures or other property legally upon or adjacent to a highway shall take reasonable steps to locate and notify the owner or person in charge of such property of such fact and of his name and address and of the registration number of the vehicle he is driving and shall upon request and if available exhibit his operator's or chauffeur's license and shall make report of such accident when and as required in 61-7-109.

History: **En. Sec. 7, Ch. 210, L. 1939; amd. Sec. 3, Ch. 256, L. 1959; R.C.M. 1947, 32-1206.**

61-7-108. Immediate notice of accidents. The driver of a vehicle involved in an accident resulting in injury to or death of any person or property damage to an apparent extent of $100 or more shall immediately by the quickest means of communication give notice of such accident to the local police department if such accident occurs within a municipality, otherwise to the office of the county sheriff or the nearest office of the highway patrol.

History: **En. Sec. 8, Ch. 210, L. 1939; amd. Sec. 4, Ch. 256, L. 1959; R.C.M. 1947, 32-1207.**

61-7-109. Written reports of accidents — additional information — form of report. (1) The operator of any motor vehicle which is in any manner involved in an accident within this state in which any person is killed or injured or in which damage to the property of any one person in excess of $250 is sustained shall, within 10 days after such accident, report the matter in writing to the division.

(2) The division may require any driver of a vehicle involved in an accident of which report must be made as provided in this section to file supplemental reports whenever the original report is insufficient and may require witnesses of accidents to render reports.

(3) Every law enforcement officer who in the regular course of duty investigates a motor vehicle accident of which report must be made as required in this part, either at the time of and at the scene of the accident or thereafter by interviewing participants or witnesses, shall within 10 days after completing the investigation forward a written report of the accident to the division.

(4) The form of the accident report required under this section shall contain information sufficient to enable the division to determine whether the requirements for the deposit of security for safety responsibility are inapplicable by reason of the existence of insurance or other exemptions specified in this part.

History: **En. Sec. 9, Ch. 210, L. 1939; amd. Sec. 5, Ch. 256, L. 1959; amd. Sec. 1, Ch. 52, L. 1971; R.C.M. 1947, 32-1208; amd. Sec. 64, Ch. 421, L. 1979.**

61-7-110. When driver unable to report. (1) An accident report is not required under this part from any person who is physically incapable of making such report during the period of such incapacity.

(2) Whenever the driver of a vehicle is physically incapable of giving an immediate notice of an accident as required in 61-7-108, and there was another occupant in the vehicle at the time of the accident capable of doing so, such occupant shall make or cause to be given the notice not given by the driver.

(3) Whenever the driver is physically incapable of making a written report of an accident as required in 61-7-109, and such driver is not the owner of the vehicle, then the owner of the vehicle involved in such accident

shall within 10 days after learning of such accident, make such report not made by the driver.

(4) Any person who gives information in reports as required in 61-7-109 or in this section, knowing or having reason to believe that such information is false, shall be fined not more than $500 or imprisonment for not more than 6 months or both.

History: En. Sec. 10, Ch. 210, L. 1939; amd. Sec. 6, Ch. 256, L. 1959; R.C.M. 1947, 32-1209.

61-7-111. Accident report forms. (1) The division shall prepare and, upon request, supply to police departments, coroners, medical examiners, sheriffs, garages, and other suitable agencies or individuals forms for accident reports required hereunder, appropriate with respect to the persons required to make such reports and the purposes to be served. The written reports to be made by persons involved in accidents and by investigating officers shall call for sufficiently detailed information to disclose with reference to a traffic accident the causes, conditions then existing, and the persons and vehicles involved.

(2) Every accident report required to be made in writing shall be made on the appropriate form approved by the division and shall contain all of the information required therein unless not available.

(3) The division may suspend the license or permit to drive of any resident or the nonresident operating privilege of any person failing to report an accident as herein provided until such report has been filed. Any person convicted of failing to report an accident by the quickest means of communication or failing to forward a written report as required herein is guilty of a misdemeanor and punishable by a fine of not more than $25.

History: En. Sec. 11, Ch. 210, L. 1939; amd. Sec. 7, Ch. 256, L. 1959; R.C.M. 1947, 32-1210; amd. Sec. 31, Ch. 7, L. 1979.

61-7-112. Coroners and medical examiners to report. Each coroner, medical examiner, or other official performing like functions shall, on or before the 10th day of each month, report in writing to the division the deaths of all persons within his respective jurisdiction during the preceding calendar month as the result of traffic accidents, giving the time and place of each accident and the circumstances relating thereto.

History: En. Sec. 12, Ch. 210, L. 1939; amd. Sec. 8, Ch. 256, L. 1959; R.C.M. 1947, 32-1211; amd. Sec. 32, Ch. 7, L. 1979.

61-7-113. Garages to report. The person in charge of any garage or repair shop to which is brought any motor vehicle which shows evidence of having been struck by any bullet or involved in an accident of which report must be made as provided in 61-7-109 shall report to the division within 24 hours after such motor vehicle is received, giving the engine number, registration number, and the name and address of the owner or operator of such vehicle.

History: En. Sec. 13, Ch. 210, L. 1939; R.C.M. 1947, 32-1212.

61-7-114. Accident reports confidential. (1) All required accident reports and supplemental reports shall be without prejudice to the individual so reporting and shall be for the confidential use of the division or other state agencies having use for the records for accident prevention purposes, or for the administration of the laws of this state relating to the deposit of security and proof of financial responsibility by persons driving or the owners of motor vehicles, except that the division may disclose the identity of a person involved in an accident when such identity is not otherwise known or when such person denies his presence at such accident.

(2) All accident reports and supplemental information filed as required by this part shall be confidential and not open to general public inspection, nor shall copying of lists of such reports be permitted, except, however, that the report and supplemental information filed by law enforcement personnel, as required by this part, may be examined by any person named in such report or reports or by any driver, passenger, or pedestrian involved in the accident or by his representative designated in writing, or if such person shall be deceased, by his executor or administrator or by the attorney representing such executor or administrator.

(3) No such report shall be used as evidence in any trial, civil or criminal, arising out of an accident, except that the division shall furnish upon demand of any person who has or claims to have made such a report or upon the demand of any court a certificate showing that a specified accident report has or has not been made to the division solely to prove a compliance or a failure to comply with the requirement that such a report be made to the division.

History: En. Sec. 14, Ch. 210, L. 1939; amd. Sec. 9, Ch. 256, L. 1959; amd. Sec. 1, Ch. 142, L. 1973; R.C.M. 1947, 32-1213.

61-7-115. Division to tabulate and analyze accident reports. The division shall tabulate and may analyze all accident reports and shall publish annually or at more frequent intervals statistical information based thereon as to the number and circumstances of traffic accidents.

History: En. Sec. 15, Ch. 210, L. 1939; R.C.M. 1947, 32-1214.

61-7-116. Any incorporated city permitted to require accident reports. Any incorporated city, town, village, or other municipality may by ordinance require that the driver of a vehicle involved in an accident shall also file with a designated city department a report of such accident or a copy of any report herein required to be filed with the division. All such reports shall be for the confidential use of the city department and subject to the provisions of 61-7-114.

History: En. Sec. 16, Ch. 210, L. 1939; R.C.M. 1947, 32-1215.

61-7-117. Uniformity of interpretation. This part shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. Sec. 17, Ch. 210, L. 1939; R.C.M. 1947, 32-1216.

CHAPTER 8

TRAFFIC REGULATION

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61-8-720. Penalty.
61-8-721. Repealed. Sec. 99, Ch. 421, L. 1979.

Chapter Cross-References

Special parking permits for handicapped, Title 49, ch. 4, part 3.

Part 1

General Provisions

61-8-101. Application — exceptions. (1) The provisions of this chapter relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways except:

(a) where a different place is specifically referred to in a given section;

(b) the provisions of 61-8-301 and 61-8-401, with regard to operating a vehicle while under the influence of drugs, shall apply upon highways and elsewhere throughout the state.

(2) The operation of motor vehicles directly across the public roads and highways of this state, especially as required in the transportation of natural resource products, including agricultural products and livestock, shall not be considered to be the operation of such vehicles on the public roads and highways of this state provided that such crossings are adequately marked with warning signs or devices. Such crossings are subject to provisions relating to stopping before entry and to restoration of any damage as may reasonably be prescribed by the state or local agency in control of safety of operation of the public highway involved.

History: (1)En. Sec. 22, Ch. 263, L. 1955; Sec. 32-2124, R.C.M. 1947; (2)En. Sec. 4, Ch. 247, L. 1959; Sec. 32-2124.1, R.C.M. 1947; R.C.M. 1947, 32-2124(part), 32-2124.1; amd. Sec. 65, Ch. 421, L. 1979.

61-8-102. Uniformity of interpretation. This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. Sec. 155, Ch. 263, L. 1955; R.C.M. 1947, 32-21-158.

61-8-103. Provisions uniform throughout state — power of local authorities. The provisions of this chapter shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein and no local authority shall enact or enforce any ordinance, rule, or regulation in conflict with the provisions of this chapter unless expressly authorized herein. Local authorities may, however, adopt additional traffic regulations which are not in conflict with the provisions of this chapter.

History: **En. Sec. 27, Ch. 263, L. 1955; amd. Sec. 1, Ch. 201, L. 1957; R.C.M. 1947, 32-2130.**

61-8-104. Required obedience to traffic laws. It is unlawful and, unless otherwise declared in this chapter with respect to particular offenses, it is a misdemeanor for any person to do any act forbidden or fail to perform any act required in this chapter.

History: **En. Sec. 23, Ch. 263, L. 1955; R.C.M. 1947, 32-2125.**

61-8-105. Obedience to police officers and highway patrolmen. No person shall willfully fail or refuse to comply with any lawful order or direction of any police officer or highway patrolman pertaining to the use of the highways by traffic.

History: **En. Sec. 24, Ch. 263, L. 1955; R.C.M. 1947, 32-2126.**

61-8-106. Responsibility of public officers and employees. (1) The provisions of this chapter applicable to the drivers of vehicles upon the highways shall apply to the drivers of all vehicles owned or operated by the United States, this state, or any county, city, or town, district, or any other political subdivision of the state, except as provided in this section and subject to such specific exceptions as are set forth in this chapter with reference to authorized emergency vehicles.

(2) Unless specifically made applicable, the provisions of this chapter except those contained in part 5 of chapter 8 shall not apply to persons, teams, motor vehicles, and other equipment while actually engaged in work upon the surface of a highway but shall apply to such persons and vehicles when traveling to or from such work.

History: **En. Sec. 25, Ch. 263, L. 1955; R.C.M. 1947, 32-2127.**

61-8-107. Police vehicles and authorized emergency vehicles. (1) The driver of a police vehicle or authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section, but subject to the conditions herein stated.

(2) The driver of a police vehicle or authorized emergency vehicle may:

(a) park or stand, irrespective of the provisions of this chapter;

(b) proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;

(c) exceed the speed limits so long as he does not endanger life or property;

(d) disregard regulations governing direction of movement or turning in specified directions.

(3) The exemptions granted to a police vehicle or authorized emergency vehicle apply only when the vehicle is making use of an audible or visual signal, or both, meeting the requirements of 61-9-402.

(4) The foregoing provisions shall not relieve the driver of a police vehicle or authorized emergency vehicle from the duty to drive with due regard for

the safety of all persons, nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others.

History: En. Sec. 25.1, Ch. 263, L. 1955; amd. Sec. 1, Ch. 169, L. 1957; amd. Sec. 2, Ch. 153, L. 1975; R.C.M. 1947, 32-2128; amd. Sec. 1, Ch. 11, L. 1981.

Compiler's Comments

1981 Amendment: Changed language in (3) from "audible and visual signals" to "audible or visual signal, or both"; deleted "except that an authorized emergency vehicle operated as a police vehicle need not be equipped with or display a red light visible from in front of the vehicle" from the end of (3).

Cross-References

Audible and visual signals on vehicles, 61-9-402.

61-8-108. Traffic laws applicable to persons driving animal-drawn vehicles. Every person driving an animal-drawn vehicle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this chapter, except those provisions of this chapter which by their very nature can have no application.

History: En. Sec. 26, Ch. 263, L. 1955; R.C.M. 1947, 32-2129.

61-8-109. Rights of owners of real property not affected — when. Nothing in this chapter shall be construed to prevent the owner of real property used by the public for purposes of vehicular travel by permission of the owner from prohibiting such use or from requiring other or different or additional conditions than those specified in this chapter, or otherwise regulating such use as may seem best to such owner.

History: En. Sec. 29, Ch. 263, L. 1955; R.C.M. 1947, 32-2132.

61-8-110. Forest development road, special service road defined. For the purpose of 61-8-111 and 61-8-112 a "forest development road" is defined as a road located on national forest lands or on a right-of-way acquired by the United States and used for the protection, administration, and utilization of the national forests and other lands administered by the United States forest service; and a "special service road" is defined as a forest development road or segment thereof, the right-of-way for which is controlled by the United States and which is not a part of the highway system of the state or of a county or other public road authority of this state, designated by the forest service, pursuant to the regulations of the secretary of the United States department of agriculture, as a special service road for the purpose of controlling and regulating its use to accomplish the purposes of the secretary of agriculture's regulations applicable to the administration of the forest development transport system.

History: En. Sec. 1, Ch. 139, L. 1971; R.C.M. 1947, 32-2124.3.

61-8-111. State laws applicable on forest development roads — enforcement. Forest development roads in the state, whether or not they meet the definition of a public highway by the laws of this state, are subject to the traffic laws of this state and the Montana highway patrol and county sheriffs of this state shall have jurisdiction thereon to investigate accidents and enforce the Montana traffic laws.

History: En. Sec. 2, Ch. 139, L. 1971; R.C.M. 1947, 32-2124.4.

61-8-112. Special service roads not subject to state law enforcement — when. When forest development roads, or segments thereof, are designated as special service roads by the United States forest service and by such designation are subjected to traffic rules in addition to or in conflict with the Montana traffic laws, neither the additional nor conflicting traffic rules so prescribed by the forest service nor the Montana traffic law with which they conflict shall be within the jurisdiction of law enforcement officers of this state as to such special service road.

History: En. Sec. 3, Ch. 139, L. 1971; R.C.M. 1947, 32-2124.5.

Part 2

Traffic-Control Devices

61-8-201. Obedience to traffic-control devices. (1) The driver of any vehicle shall obey the instructions of any official traffic-control device applicable thereto placed in accordance with the provisions of this chapter unless otherwise directed by a highway patrolman or police officer, subject to the exceptions granted the driver of an authorized emergency vehicle in this chapter.

(2) No provision of this chapter for which signs are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official sign is not in proper position and sufficiently legible to be seen by an ordinarily observant person. Whenever a particular section does not state the signs are required, such section shall be effective even though no signs are erected or in place.

History: En. Sec. 33, Ch. 263, L. 1955; R.C.M. 1947, 32-2136.

61-8-202. Department of highways to adopt sign manual. The department of highways shall adopt a manual for a uniform system of traffic-control devices consistent with this chapter for use upon highways within the state. This uniform system shall correlate with and so far as possible conform to the manual on uniform traffic control devices, as amended.

History: En. Sec. 30, Ch. 263, L. 1955; amd. Sec. 1, Ch. 241, L. 1959; amd. Sec. 52, Ch. 316, L. 1974; R.C.M. 1947, 32-2133; amd. Sec. 1, Ch. 37, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "and specifications" following "manual" in the first sentence; substituted "manual on uniform traffic control devices, as amended" for language relating to a system and sign manual adopted by the American association of state highway officials.

61-8-203. Department of highways to sign all state highways. (1) The department of highways shall place and maintain traffic-control devices, conforming to its manual and specifications, upon all state highways it considers necessary to indicate and to carry out this chapter and chapter 9 or to regulate, warn, or guide traffic.

(2) A local authority may not place or maintain a traffic-control device upon a highway under the jurisdiction of the department except by the latter's permission.

(3) Only the department may erect and maintain these traffic-control devices conforming to its manual and specifications on a controlled-access highway or controlled-access facility. The erection of a sign, marker, or emblem on a controlled-access facility or controlled-access highway by any

other public authority, or agent, or by a private individual, firm, or corporation is unlawful and a misdemeanor and punishable as provided in 61-8-712.

(4) The erection or maintenance of a sign, marker, emblem, or traffic-control device on a state highway except a controlled-access highway or controlled-access facility, is subject to the rules and specifications the department adopts and publishes in the interest of public safety and convenience.

History: En. Sec. 31, Ch. 263, L. 1955; amd. Sec. 1, Ch. 224, L. 1959; amd. Sec. 53, Ch. 316, L. 1974; R.C.M. 1947, 32-2134(a) thru (d).

61-8-204. Reward for information on injury to or removal of sign or marker. Upon conviction under the provisions of 61-8-713, any person who furnishes information to law enforcement officers leading to the arrest and conviction of the accused person shall be paid a reward from the state highway account in the earmarked revenue fund in the sum of $100.

History: En. Sec. 2, Ch. 184, L. 1965; R.C.M. 1947, 32-2134.2.

61-8-205. Posting of penalties along highways. The department of highways shall post notices of 61-8-713, and the penalties provided for, at locations designated by the department.

History: En. Sec. 3, Ch. 184, L. 1965; amd. Sec. 54, Ch. 316, L. 1974; R.C.M. 1947, 32-2134.3.

61-8-206. Local traffic-control devices. Local authorities in their respective jurisdictions shall place and maintain such traffic-control devices upon highways under their jurisdiction as they may deem necessary to indicate and to carry out the provisions of this chapter or local traffic ordinances or to regulate, warn, or guide traffic. All such traffic-control devices hereafter erected shall conform to the state manual and specifications.

History: En. Sec. 32, Ch. 263, L. 1955; R.C.M. 1947, 32-2135.

61-8-207. Traffic-control signal legend. Whenever traffic is controlled by traffic-control signals exhibiting the words "Go", "Caution", or "Stop" or exhibiting different colored lights successively one at a time or with arrows, the following colors only shall be used and said terms and lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

(1) Green alone or "Go":

(a) Vehicular traffic facing the signal may proceed straight through or turn left or right unless a sign at such place prohibits either such turn. But vehicular traffic, including vehicles turning right or left, shall yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection of an adjacent crosswalk at the time such signal is exhibited.

(b) Pedestrians facing the signal may proceed across the roadway within any marked or unmarked crosswalk.

(2) Yellow alone or "Caution" when shown following the green or "Go" signal:

(a) Vehicular traffic facing the signal is thereby warned that the red or "Stop" signal will be exhibited immediately thereafter and such vehicular traffic shall not enter or be crossing the intersection when the red or "Stop" signal is exhibited.

(b) Pedestrians facing such signals are thereby advised that there is insufficient time to cross the roadway, and any pedestrian then starting to cross shall yield the right-of-way to all vehicles.

(3) Red alone or "Stop":

(a) Vehicular traffic facing the signal shall stop before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection and shall remain standing until green or "Go" is shown alone, until a right turn can safely be made, or until a left turn can safely be made from the far left lane if the turn is made from a one-way street onto another one-way street going left. In making such turn vehicular traffic must yield the right-of-way to pedestrians lawfully within the crosswalk and to other traffic lawfully using the intersection. If a traffic sign legend indicating that no right turn on red or no left turn on red may be made after a stop is posted at said intersection, such movement cannot be made until green or "Go" is shown alone.

(b) No pedestrian facing such signal shall enter the roadway unless he can do so safely and without interfering with any vehicular traffic.

(4) Red with green arrow:

(a) Vehicular traffic facing such signal may cautiously enter the intersection only to make the movement indicated by such arrow but shall yield the right-of-way to pedestrians lawfully within the crosswalk and to other traffic lawfully using the intersection.

(b) No pedestrian facing such signal shall enter the roadway unless he can do so safely and without interfering with any vehicular traffic.

(5) Traffic-control signal at place other than intersection:

(a) In the event an official traffic-control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions which by their very nature can have no application.

(b) Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such sign or marking the stop shall be made at the signal.

History: En. Sec. 34, Ch. 263, L. 1955; amd. Sec. 1, Ch. 211, L. 1963; amd. Sec. 1, Ch. 206, L. 1974; R.C.M. 1947, 32-2137; amd. Sec. 1, Ch. 62, L. 1979.

61-8-208. Pedestrian control signals. Whenever special pedestrian control signals exhibiting the words "Walk" or "Wait" or "Don't Walk" are in place such signals shall indicate as follows:

(1) Walk. Pedestrians facing such signal may proceed across the roadway in the direction of the signal and shall be given the right-of-way by the drivers of all vehicles.

(2) Wait or Don't Walk. No pedestrian shall start to cross the roadway in the direction of such signal, but any pedestrian who has partially completed his crossing on the walk signal shall proceed to a sidewalk or safety island while the wait signal is showing.

History: En. Sec. 35, Ch. 263, L. 1955; R.C.M. 1947, 32-2138.

61-8-209. Flashing signals. (1) Whenever an illuminated flashing red or yellow signal is used in a traffic sign or signal it shall require obedience by vehicular traffic as follows:

(a) Flashing red (stop signal). When a red lens is illuminated with rapid intermittent flashes, drivers of vehicles shall stop before entering the nearest crosswalk at an intersection or at a limit line when marked or, if none, then before entering the intersection, and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign.

(b) Flashing yellow (caution signal). When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such signal only with caution.

(2) This section shall not apply at railroad grade crossings. Conduct of drivers of vehicles approaching railroad grade crossings shall be governed by the rules as set forth in 61-8-347.

History: En. Sec. 36, Ch. 263, L. 1955; amd. Sec. 2, Ch. 169, L. 1957; R.C.M. 1947, 32-2139.

61-8-210. Display of unauthorized signs, signals, or markings. (1) No person shall place, maintain, or display upon or in view of any highway any unauthorized sign, signal, marking, or device which purports to be or is an imitation of or resembles an official traffic-control device or railroad sign, or signal, or which attempts to direct the movement of traffic, or which hides from view or interferes with the effectiveness of any official traffic-control device or any railroad sign or signal.

(2) No person shall place or maintain nor shall any public authority permit upon any highway any traffic sign or signal bearing thereon any commercial advertising.

(3) This section shall not be deemed to prohibit the erection upon private property adjacent to highways of signs giving useful directional information and of a type that cannot be mistaken for official signs.

(4) The prohibition of this section shall not apply to portable "Caution" signs placed in the vicinity of schools at those times during which school children are going to and coming from school.

History: En. Sec. 37, Ch. 263, L. 1955; R.C.M. 1947, 32-2140(a) thru (d).

Part 3

Vehicle Operating Requirements

61-8-301. Reckless driving. (1) A person commits the offense of reckless driving if he:

(a) operates any vehicle in willful or wanton disregard for the safety of persons or property; or

(b) operates any vehicle in willful or wanton disregard for the safety of persons or property while fleeing or attempting to flee from or elude a peace officer who is lawfully in pursuit and whose vehicle is at the time in compliance with the requirements of 61-9-402.

(2) Each municipality in this state may enact and enforce 61-8-715 and subsection (1) of this section as an ordinance.

History: En. Sec. 40, Ch. 263, L. 1955; amd. Sec. 4, Ch. 201, L. 1957; amd. Sec. 1, Ch. 287, L. 1977; R.C.M. 1947, 32-2143(1), (4); amd. Sec. 1, Ch. 209, L. 1979.

61-8-302. Careless driving. A person operating or driving a vehicle of any character on a public highway of this state shall drive it in a careful and prudent manner so as not to unduly or unreasonably endanger the life, limb, property, or other rights of a person entitled to the use of the street or highway.

History: En. 32-2143.3 by Sec. 1, Ch. 294, L. 1977; R.C.M. 1947, 32-2143.3.

61-8-303. Speed restrictions — basic rule. (1) A person operating or driving a vehicle of any character on a public highway of this state shall drive it in a careful and prudent manner, and at a rate of speed no greater than is reasonable and proper under the conditions existing at the point of operation, taking into account the amount and character of traffic, condition of brakes, weight of vehicle, grade and width of highway, condition of surface, and freedom of obstruction to view ahead, and he shall drive it so as not to unduly or unreasonably endanger the life, limb, property, or other rights of a person entitled to the use of the street or highway.

(2) Where no special hazard exists that requires lower speed for compliance with subsection (1) of this section, the speed of a vehicle not in excess of the limits specified in this section or established as authorized in 61-8-309, 61-8-310, 61-8-311, and 61-8-313 is lawful, but a speed in excess of those limits is unlawful:

(a) 25 miles per hour in an urban district;

(b) 35 miles per hour on a highway under construction or repair;

(c) 55 miles per hour in other locations during the nighttime, except that the nighttime speed limit on completed sections of interstate highways is 65 miles per hour.

(3) "Daytime" means from one-half hour before sunrise to one-half hour after sunset. "Nighttime" means at any other hour.

(4) The speed limits set forth in this section may be altered by the highway commission as authorized in 61-8-309, 61-8-310, and 61-8-313.

(5) The driver of a vehicle shall, consistent with subsection (1), drive at an appropriate reduced speed when approaching and crossing an intersection or railway grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon a narrow or winding roadway, and when a special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway condition.

History: En. Sec. 41, Ch. 263, L. 1955; amd. Sec. 1, Ch. 190, L. 1967; amd. Sec. 55, Ch. 316, L. 1974; R.C.M. 1947, 32-2144.

61-8-304. Declaration of speed limits — exception to the basic rule. The attorney general shall declare by proclamation filed with the secretary of state a speed limit for all motor vehicles on all public streets and highways in the state whenever the establishment of such a speed limit by the state is required by federal law as a condition to the state's continuing eligibility to receive funds authorized by the Federal Aid Highway Act of 1973 and all acts amendatory thereto or any other federal statute. The speed limit may not be less than that required by federal law, and the attorney general shall by further proclamation change the speed limit adopted pursuant to this section to comply with federal law. Any proclamation issued pursuant to this section becomes effective at midnight of the day upon which it is filed with the secretary of state. A speed limit imposed pursuant to this section is an exception to the requirements of 61-8-303 and 61-8-312, and a speed in excess of the speed limit established pursuant to this section is unlawful notwithstanding any provision of 61-8-303 and 61-8-312.

History: En. 32-2144.1 by Sec. 1, Ch. 60, L. 1974; R.C.M. 1947, 32-2144.1; amd. Sec. 66, Ch. 421, L. 1979.

61-8-305. Applicability of conservation speed limit — administrative procedure act not applicable. (1) The provisions of 61-8-304 shall not apply to those public streets and highways for which a speed limit lower than that required by federal law was applicable on March 2, 1974, under any other state, county, municipal, or other local law, ordinance, regulation, or order.

(2) The attorney general shall terminate by proclamation any speed limit proclaimed under 61-8-304 whenever such a speed limit is no longer required by federal law as a condition to the state's continuing eligibility to receive funds authorized by the Federal-Aid Highway Act of 1973 and all acts amendatory thereto or by any other federal statute.

(3) The establishment of a speed limit pursuant to 61-8-304 shall not be subject to the provisions and requirements of the Montana Administrative Procedure Act.

History: En. 32-2144.2, 32-2144.3, 32-2144.4 by Secs. 2, 3, 4, Ch. 60, L. 1974; R.C.M. 1947, 32-2144.2, 32-2144.3, 32-2144.4.

61-8-306. Lower speed limits. Nothing in 61-8-304 through 61-8-307 shall prohibit any state, county, municipal, or other local official, board, or body which has authority to enact laws relating to motor vehicle speed limits from establishing speed limits lower than that required by federal law on any public streets or highways as permitted by law on March 2, 1974.

History: En. 32-2144.5 by Sec. 5, Ch. 60, L. 1974; R.C.M. 1947, 32-2144.5.

61-8-307. Existing statutes not affected. Sections 61-8-304 through 61-8-306 in no way affect traffic control statutes and violations of existing statutes shall be prosecuted solely as provided therein.

History: En. 32-2144.7 by Sec. 7, Ch. 60, L. 1974; R.C.M. 1947, 32-2144.7.

61-8-308. Permission of authorities to hold speed contest. No race or contest for speed shall be held and no person shall engage in or aid or abet in any motor vehicle speed contest or exhibition of speed on a public highway or street without written permission of the authorities of the state, county, or city having jurisdiction and unless the same is fully and efficiently patrolled for the entire distance over which such race or contest for speed is to be held.

History: En. Sec. 1, Ch. 100, L. 1967; R.C.M. 1947, 32-2143.1.

61-8-309. Establishment of special speed zones. (1) If the department of highways determines upon the basis of an engineering and traffic investigation that a speed limit set by 61-8-303 is greater or less than is reasonable or safe under the conditions found to exist at an intersection, curve, dangerous location, or any other part of a highway under its jurisdiction, the commission may set a reasonable and safe special speed limit at that part.

(2) The department shall erect and maintain appropriate signs giving notice of these special limits. When they are erected, the limits are effective at that part at all times, or at other times the commission sets.

(3) The authority of the commission under this section includes the authority to set reduced nighttime speed limits on curves and other dangerous locations.

(4) This section does not authorize the commission to set a state-wide speed limit.

History: En. Sec. 42, Ch. 263, L. 1955; amd. Sec. 1, Ch. 204, L. 1959; amd. Sec. 1, Ch. 178, L. 1961; amd. Sec. 56, Ch. 316, L. 1974; R.C.M. 1947, 32-2145.

61-8-310. When local authorities may and shall alter limits. (1) If a local authority in its jurisdiction determines on the basis of an engineering and traffic investigation that the speed permitted under 61-8-303 and 61-8-309 through 61-8-313 is greater or less than is reasonable and safe under the conditions found to exist upon a highway or part of a highway, the local authority may set a reasonable and safe limit thereon which:

(a) decreases the limit at an intersection;

(b) increases the limit within an urban district, but not to more than 55 miles per hour during the nighttime; or

(c) decreases the limit outside an urban district, but not to less than 35 miles per hour.

(2) A local authority in its jurisdiction shall determine by an engineering and traffic investigation the proper speed for all arterial streets and shall set a reasonable and safe limit thereon which may be greater or less than the speed permitted under 61-8-303 for an urban district.

(3) An altered limit established as authorized under this section is effective at all times or at other times determined by the authority when appropriate signs giving notice of the altered limit are erected upon the highway.

(4) The commission has exclusive jurisdiction to set special speed limits on all federal-aid highways or extensions thereof in all municipalities or urban areas. The commission shall set these limits in accordance with 61-8-309.

History: En. Sec. 43, Ch. 263, L. 1955; amd. Sec. 1, Ch. 89, L. 1971; amd. Sec. 57, Ch. 316, L. 1974; R.C.M. 1947, 32-2146.

61-8-311. Minimum speed regulations. (1) A person may not drive a motor vehicle at a speed slow enough to impede or block the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law.

(2) On a two-lane highway where passing is unsafe because of traffic in the opposite direction or other conditions, a slow-moving vehicle, including a passenger vehicle, behind which four or more vehicles are formed in line shall turn off the roadway at the nearest place designated as a turnout by signs erected by the authority having jurisdiction over the highway or wherever sufficient area for a safe turnout exists in order to permit the vehicles following it to proceed. As used in this section a slow-moving vehicle is one which is proceeding at a rate of speed less than the normal flow of traffic at the particular time and place. The department of highways is authorized to designate and construct such turnouts and to erect signs at appropriate places advising motorists of this statute.

(3) If the department of highways or local authorities within their respective jurisdictions determine on the basis of an engineering and traffic investigation that slow speeds on any part of a highway consistently impede the normal and reasonable movement of traffic, the commission or the local authority may set a minimum speed limit below which a person may not

drive a vehicle except when necessary for safe operation or in compliance with law.

History: En. Sec. 44, Ch. 263, L. 1955; amd. Sec. 1, Ch. 387, L. 1973; amd. Sec. 58, Ch. 316, L. 1974; R.C.M. 1947, 32-2147.

61-8-312. Special speed limitations on trucks, truck tractors, motor-driven cycles, and vehicles towing housetrailers. (1) No person shall operate any truck or truck tractor the gross weight of which exceeds 8,000 pounds at a speed greater than 65 miles per hour on those completed sections of interstate and four-lane divided highways and 60 miles per hour on those completed sections of primary and secondary highways. However, the truck nighttime speed limit shall not exceed that of automobiles as stated in 61-8-303.

(2) No person shall operate any motor-driven cycle at any time mentioned in 61-9-201 at a speed greater than 35 miles per hour unless such motor-driven cycle is equipped with a headlamp or lamps which are adequate to reveal a person or vehicle at a distance of 300 feet ahead.

(3) No person shall operate a vehicle which is towing a housetrailer at a speed greater than a maximum of 50 miles per hour.

History: En. Sec. 45, Ch. 263, L. 1955; amd. Sec. 1, Ch. 241, L. 1957; amd. Sec. 1, Ch. 119, L. 1961; amd. Sec. 1, Ch. 253, L. 1971; R.C.M. 1947, 32-2148.

61-8-313. Special speed limitations. (1) A person may not drive a vehicle equipped with solid rubber or cushion tires at a speed greater than 10 miles per hour.

(2) A person may not drive a vehicle over a bridge or other elevated structure constituting a part of a highway at a speed which is greater than the maximum speed which can be maintained with safety to the bridge or structure when the structure is signposted as provided in this section.

(3) The department of highways upon request from a local authority may, or upon its own initiative shall, conduct an investigation of a bridge or other elevated structure constituting a part of a highway, and if it finds on investigation that the structure cannot safely withstand vehicles traveling at the speed otherwise permissible under this chapter, the commission shall set the maximum speed of vehicles which the structure can withstand, and the department shall erect and maintain suitable signs stating the maximum speed at a distance of not less than 100 feet before each end of the structure.

(4) Upon the trial of a person charged with a violation of this section, proof of the setting of the maximum speed by the commission and the existence of the signs is conclusive evidence of the maximum speed which can be maintained with safety to the bridge or structure.

History: En. Sec. 46, Ch. 263, L. 1955; amd. Sec. 59, Ch. 316, L. 1974; R.C.M. 1947, 32-2149.

61-8-314 through 61-8-320 reserved.

61-8-321. Drive on right side of roadway — exceptions. (1) Upon all roadways of sufficient width a vehicle shall be driven upon the right half of the roadway, except as follows:

(a) when overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;

(b) when the right half of a roadway is closed to traffic while under construction or repair;

(c) upon a roadway divided into three marked lanes for traffic under the rules applicable thereon; or

(d) upon a roadway designated and signposted for one-way traffic.

(2) Upon all roadways any vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall be driven in the right-hand lane then available for traffic, or as close as practicable to the right-hand curb or edge of the roadway except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway.

History: **En. Sec. 48, Ch. 263, L. 1955; R.C.M. 1947, 32-2151.**

61-8-322. Passing vehicles proceeding in opposite directions. Drivers of vehicles proceeding in opposite directions shall pass each other to the right, and upon roadways having width for not more than one line of traffic in each direction, each driver shall give to the other at least one-half of the main-traveled portion of the roadway.

History: **En. Sec. 49, Ch. 263, L. 1955; R.C.M. 1947, 32-2152; amd. Sec. 67, Ch. 421, L. 1979.**

61-8-323. Overtaking a vehicle on the left. The following rules shall govern the overtaking and passing of vehicles proceeding in the same direction, subject to those limitations, exceptions, and special rules hereinafter stated:

(1) The driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left thereof at a safe distance and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle.

(2) Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle on audible signal and shall not increase the speed of his vehicle until completely passed by the overtaking vehicle.

History: **En. Sec. 50, Ch. 263, L. 1955; R.C.M. 1947, 32-2153.**

61-8-324. When overtaking on right is permitted. (1) The driver of a vehicle may overtake and pass upon the right of another vehicle only under the following conditions:

(a) when the vehicle overtaken is making or about to make a left turn;

(b) upon a street or highway with unobstructed pavement not occupied by parked vehicles of sufficient width for two or more lines of moving vehicles in each direction;

(c) upon a one-way street, or upon any roadway on which traffic is restricted to one direction of movement, where the roadway is free from obstructions and of sufficient width for two or more lines of moving vehicles.

(2) The driver of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting such movement in safety. In no event shall such movement be made by driving off the pavement or main-traveled portion of the roadway.

History: **En. Sec. 51, Ch. 263, L. 1955; R.C.M. 1947, 32-2154.**

61-8-325. Limitations on overtaking on the left. (1) No vehicle shall be driven to the left side of the center of the roadway in overtaking and passing another vehicle proceeding in the same direction unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be completely made without interfering with the safe operation of any vehicle approaching from the opposite direction or any vehicle overtaken. In every event the overtaking vehicle must return to the right-hand side of the roadway before coming within 100 feet of any vehicle approaching from the opposite direction.

(2) No vehicle shall at any time be driven to the left side of the roadway under the following conditions:

(a) when approaching the crest of a grade or upon a curve in the highway where the driver's view is obstructed within such distance as to create a hazard in the event another vehicle might approach from the opposite direction;

(b) when approaching within 100 feet of or traversing any intersection or railroad grade crossing;

(c) when the view is obstructed upon approaching within 100 feet of any bridge, viaduct, or tunnel.

(3) The foregoing limitations shall not apply upon a one-way roadway.

History: En. Secs. 52, 53, Ch. 263, L. 1955; R.C.M. 1947, 32-2155, 32-2156.

61-8-326. No-passing zones. (1) The department of highways may determine those portions of a highway where overtaking and passing or driving to the left of the roadway would be especially hazardous, and it may by appropriate signs or markings on the roadway indicate the beginning and end of these zones. When the signs or markings are in place and clearly visible to an ordinarily observant person, every driver of a vehicle shall obey the directions of those signs.

(2) Where signs or markings are in place to define a no-passing zone as set forth in subsection (1) a driver may not drive on the left side of the roadway within the no-passing zone or on the left side of a pavement striping designed to mark the no-passing zone throughout its length.

History: En. Sec. 54, Ch. 263, L. 1955; amd. Sec. 1, Ch. 97, L. 1957; amd. Sec. 60, Ch. 316, L. 1974; R.C.M. 1947, 32-2157.

61-8-327. One-way roadways and rotary traffic islands. (1) The department of highways may designate a highway or a separate roadway under its jurisdiction for one-way traffic and shall erect appropriate signs giving notice of that designation.

(2) Upon a roadway designated and signposted for one-way traffic a vehicle may be driven only in the direction designated.

(3) A vehicle passing around a rotary traffic island may be driven only to the right of such island.

History: En. Sec. 55, Ch. 263, L. 1955; amd. Sec. 61, Ch. 316, L. 1974; R.C.M. 1947, 32-2158.

61-8-328. Driving on roadways laned for traffic. Whenever any roadway has been divided into two or more clearly marked lanes for traffic the following rules, in addition to all others consistent herewith, shall apply:

(1) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

(2) Upon a roadway which is divided into three lanes a vehicle shall not be driven in the center lane except when overtaking and passing another vehicle where the roadway is clearly visible and such center lane is clear of traffic within a safe distance, or in preparation for a left turn or where such center lane is at the time allocated exclusively to traffic moving in the direction the vehicle is proceeding and is signposted to give notice of such allocation.

(3) Official signs may be erected directing slow-moving traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway and drivers of vehicles shall obey the directions of every such sign.

History: En. Sec. 56, Ch. 263, L. 1955; R.C.M. 1947, 32-2159.

61-8-329. Following too closely. (1) The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway.

(2) The driver of any truck tractor, truck, or motor vehicle drawing another vehicle when traveling upon a roadway outside of a business or residence district and which is following another truck tractor, truck, or motor vehicle drawing another vehicle shall, whenever conditions permit, leave sufficient space so that an overtaking vehicle may enter and occupy such space without danger, except that this shall not prevent a truck tractor, truck, or motor vehicle drawing another vehicle from overtaking and passing any like vehicle or other vehicle.

(3) Motor vehicles being driven upon any roadway outside of a business or residence district in a caravan or motorcade whether or not towing other vehicles shall be so operated as to allow sufficient space between each such vehicle or combination of vehicles so as to enable any other vehicle to enter and occupy such space without danger. This provision shall not apply to funeral processions.

History: En. Sec. 57, Ch. 263, L. 1955; R.C.M. 1947, 32-2160.

61-8-330. Driving on divided highways. Whenever any highway has been divided into two roadways by leaving an intervening space or by physical barrier or clearly indicated dividing section so constructed as to impede vehicular traffic, every vehicle shall be driven only upon the right-hand roadway and no vehicle shall be driven over, across, or within any such dividing space, barrier, or section except through an opening in such physical barrier or dividing section or space or at a crossover or intersection established by public authority.

History: En. Sec. 58, Ch. 263, L. 1955; R.C.M. 1947, 32-2161.

61-8-331. Restricted and controlled access. (1) No person shall drive a vehicle onto or from any controlled-access roadway except at such entrances and exits as are established by public authority.

(2) On any controlled-access highway or facility it is unlawful for any person to:

(a) drive a vehicle over, upon, or across any curb, central dividing section, or other separation or dividing line;

(b) make a left turn or a semicircular or U-turn except through an opening provided for that purpose in the dividing curb, section, separation, or line;

(c) drive any vehicle except in the proper lane, in the proper direction, and to the right of the central dividing curb, separation, section, or line;

(d) drive any vehicle from a local service road except through an opening provided for that purpose in the dividing curb, section, or line which separates the service road from the highway or facility;

(e) construct, operate, or maintain any road or private driveway connecting with the highway or facility without first obtaining permission in writing from the highway authority having jurisdiction and, with the exception of an interstate highway, from the local governing body.

History: **(1)En. Sec. 59, Ch. 263, L. 1955; Sec. 32-2162, R.C.M. 1947; (2)En. Sec. 10-111, Ch. 197, L. 1965; Sec. 32-4311, R.C.M. 1947; R.C.M. 1947, 32-2162, 32-4311(1).**

61-8-332. Restrictions on use of controlled-access roadway. (1) The department of highways may by rule and local authorities may by ordinance prohibit the use of a controlled-access highway under their respective jurisdictions by pedestrians, bicycles, or other nonmotorized traffic or by a person operating a motor-driven cycle.

(2) The department or the local authority which adopts the prohibitory regulation shall erect and maintain official signs on the controlled-access roadway on which these regulations are applicable. It is unlawful for a person to violate the restrictions stated on those signs.

History: **En. Sec. 60, Ch. 263, L. 1955; amd. Sec. 62, Ch. 316, L. 1974; R.C.M. 1947, 32-2163.**

61-8-333. Required position and method of turning at intersections — signs. (1) The driver of a vehicle intending to turn at an intersection shall do so as follows:

(a) Right turns. Both the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.

(b) Left turn on two-way roadways. At any intersection where traffic is permitted to move in both directions on each roadway entering the intersection, an approach for a left turn shall be made in that portion of the right half of the roadway nearest the center line thereof and by passing to the right of such center line where it enters the intersection and after entering the intersection the left turn shall be made so as to leave the intersection to the right of the center line of the roadway being entered. Whenever practicable the left turn shall be made in that portion of the intersection to the left of the center of the intersection.

(c) Left turns on other than two-way roadways. At any intersection where traffic is restricted to one direction on one or more of the roadways, the driver of a vehicle intending to turn left at any such intersection shall approach the intersection in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of such vehicle and after entering the intersection the left turn shall be made so as to leave the intersection, as nearly as practicable, in the left-hand lane lawfully available to traffic moving in such direction upon the roadway being entered.

(2) Local authorities in their respective jurisdictions may cause markers, buttons, or signs to be placed within or adjacent to intersections and thereby

require and direct that a different course from that specified in this section be traveled by vehicles turning at an intersection, and when markers, buttons, or signs are so placed no driver of a vehicle shall turn a vehicle at an intersection other than as directed and required by such markers, buttons, or signs.

History: **En. Sec. 61, Ch. 263, L. 1955; R.C.M. 1947, 32-2164.**

61-8-334. Turning on curve or crest of grade prohibited. No vehicle shall be turned so as to proceed in the opposite direction upon any curve or upon the approach to or near the crest of a grade where such vehicle cannot be seen by the driver of any other vehicle approaching from either direction within 500 feet.

History: **En. Sec. 62, Ch. 263, L. 1955; R.C.M. 1947, 32-2165.**

61-8-335. Starting parked vehicle. No person shall start a vehicle which is stopped, standing, or parked unless and until such movement can be made with reasonable safety.

History: **En. Sec. 63, Ch. 263, L. 1955; R.C.M. 1947, 32-2166.**

61-8-336. Turning movements and required signals. (1) No person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as required by 61-8-333 or turn a vehicle to enter a private road or driveway or otherwise turn a vehicle from a direct course or move right or left upon a roadway unless and until such movement can be made with reasonable safety. No person shall so turn any vehicle without giving an appropriate signal in the manner hereinafter provided in the event any other traffic may be affected by such movement.

(2) A signal of intention to turn right or left, other than when passing, when required shall be given continuously during not less than the last 100 feet traveled by the vehicle before turning in any business, residence, or urban district as defined in 61-1-408 through 61-1-410.

(3) A signal of intention to turn right or left, other than when passing, when required shall be given continuously during not less than the last 300 feet traveled by the vehicle before turning in areas other than those set forth in subsection (2).

(4) No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided herein to the driver of any vehicle immediately to the rear when there is opportunity to give such signal.

History: **En. Sec. 64, Ch. 263, L. 1955; R.C.M. 1947, 32-2167; amd. Sec. 1, Ch. 14, L. 1981.**

Compiler's Comments

1981 Amendment: Inserted "other than when passing" and added the last phrase beginning "in any business . . ." in (2); inserted subsection (3).

61-8-337. Signals by hand and arm or signal device. (1) Any stop or turn signal when required herein shall be given either by means of the hand and arm or by a signal lamp or lamps, except as otherwise provided in subsection (2).

(2) Any motor vehicle in use on a highway shall be equipped with and required signal shall be given by a signal lamp or lamps when the distance from the center of the top of the steering post to the left outside limit of

the body, cab, or load of such motor vehicle exceeds 24 inches or when the distance from the center of the top of the steering post to the rear limit of the body or load thereof exceeds 14 feet. The latter measurement shall apply to any single vehicle, also to any combination of vehicles.

History: **En. Sec. 65, Ch. 263, L. 1955; amd. Sec. 1, Ch. 105, L. 1957; R.C.M. 1947, 32-2168.**

61-8-338. Method of giving hand-and-arm signals. All signals herein required given by hand and arm shall be given from the left side of the vehicle in the following manner and such signals shall indicate as follows:

(1) Left turn. Hand and arm extended horizontally.
(2) Right turn. Hand and arm extended upward.
(3) Stop or decrease speed. Hand and arm extended downward.

History: **En. Sec. 66, Ch. 263, L. 1955; R.C.M. 1947, 32-2169.**

61-8-339. Vehicle approaching or entering intersection. (1) When two vehicles enter or approach an intersection from different highways at approximately the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right.

(2) The right-of-way rule declared in subsection (1) is modified at through highways and otherwise as stated in this chapter.

History: **En. Sec. 67, Ch. 263, L. 1955; amd. Sec. 1, Ch. 175, L. 1965; R.C.M. 1947, 32-2170; amd. Sec. 68, Ch. 421, L. 1979.**

61-8-340. Vehicle turning left at intersection. The driver of a vehicle within an intersection intending to turn to the left shall yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard, but said driver, having so yielded and having given a signal when and as required by this chapter, may make such left turn and the drivers of all other vehicles approaching the intersection from said opposite direction shall yield the right-of-way to the vehicle making the left turn. The provisions of this section shall not be applicable where it is otherwise directed by appropriate signs or signals.

History: **En. Sec. 68, Ch. 263, L. 1955; R.C.M. 1947, 32-2171.**

61-8-341. Vehicle entering through highway or stop intersection. (1) The driver of a vehicle shall stop as required by 61-8-344 at the entrance to a through highway and shall yield the right-of-way to other vehicles which have entered the intersection from said through highway or which are approaching so closely on said through highway as to constitute an immediate hazard, but said driver having so yielded may proceed and the drivers of all other vehicles approaching the intersection on said through highway shall yield the right-of-way to the vehicle so proceeding into or across the through highway.

(2) The driver of a vehicle shall likewise stop in obedience to a stop sign as required herein at an intersection where a stop sign is erected at one or more entrances thereto although not a part of a through highway and shall proceed cautiously, yielding to vehicles not so obliged to stop which are within the intersection or approaching so closely as to constitute an immediate hazard, but may then proceed.

History: **En. Sec. 69, Ch. 263, L. 1955; amd. Sec. 3, Ch. 169, L. 1957; R.C.M. 1947, 32-2172.**

61-8-342. Vehicles approaching "Yield" sign. When the intersection is designated by the department of highways, or the local authority having jurisdiction, as a "Yield" intersection, the driver of a vehicle approaching the "Yield" sign shall slow to a speed of not more than 15 miles per hour and yield right-of-way to all vehicles approaching from the right or left on the intersecting roads or streets which are so close as to constitute an immediate hazard. If a driver is involved in a collision at an intersection or interferes with the movement of other vehicles after driving past a "Yield" sign, such collision or interference shall be deemed evidence of the driver's failure to yield right-of-way.

History: En. Sec. 71, Ch. 263, L. 1955; amd. Sec. 1, Ch. 96, L. 1963; amd. Sec. 63, Ch. 316, L. 1974; R.C.M. 1947, 32-2174.

61-8-343. Vehicle entering highway from private road, driveway, or public approach ramp. The driver of a vehicle about to enter or cross a highway from a private road, driveway, or public approach ramp shall yield the right-of-way to all vehicles approaching on said highway.

History: En. Sec. 70, Ch. 263, L. 1955; amd. Sec. 1, Ch. 52, L. 1965; R.C.M. 1947, 32-2173.

61-8-344. Vehicles to stop at stop signs. (1) The department of highways with reference to state highways and local authorities with reference to other highways under their jurisdiction may designate through highways and erect stop signs at specified entrances to these highways or may designate an intersection as a stop intersection and erect similar signs at one or more entrances to that intersection.

(2) The sign shall bear the word "Stop" in letters not less than 8 inches in height, and it shall be made luminous at nighttime by steady or flashing internal illumination or by a fixed floodlight projected on the face of the sign or by efficient reflecting elements on the face of the sign.

(3) The stop sign shall be erected as near as practicable to the nearest line of the crosswalk on the near side of the intersection or, if there is no crosswalk, then as close as practicable to the nearest line of the roadway.

(4) A driver of a vehicle approaching a stop sign shall stop before entering the crosswalk on the near side of the intersection or, in the event there is no crosswalk, he shall stop at a clearly marked stop line, but if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection except when directed to proceed by a police officer or highway patrolman or traffic-control signal.

History: En. Sec. 92, Ch. 263, L. 1955; amd. Sec. 65, Ch. 316, L. 1974; R.C.M. 1947, 32-2195.

61-8-345. Stop before emerging from alley, driveway, or building. The driver of a vehicle within a business or residence district emerging from an alley, driveway, or building shall stop such vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across any alleyway or driveway and shall yield the right-of-way to any pedestrian as may be necessary to avoid collision, and upon entering the roadway shall yield the right-of-way to all vehicles approaching on said roadway.

History: En. Sec. 93, Ch. 263, L. 1955; R.C.M. 1947, 32-2196.

61-8-346. Operation of vehicles on approach of police vehicles or authorized emergency vehicles. (1) Upon the immediate approach of an authorized emergency vehicle making use of audible and visual signals meeting the requirements of 61-9-402 or of a police vehicle properly and lawfully making use of an audible signal only, the driver of every other vehicle shall yield the right-of-way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in such position until the police vehicle or authorized emergency vehicle has passed, except when otherwise directed by a police officer or highway patrolman.

(2) This section shall not operate to relieve the driver of a police vehicle or authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway.

History: En. Sec. 72, Ch. 263, L. 1955; amd. Sec. 4, Ch. 169, L. 1957; amd. Sec. 3, Ch. 153, L. 1975; R.C.M. 1947, 32-2175.

61-8-347. Obedience to signal indicating approach of train. (1) Whenever any person driving a vehicle approaches a railroad grade crossing under any of the circumstances stated in this section, the driver of such vehicle shall stop within 50 feet but not less than 15 feet from the nearest rail of such railroad, and shall not proceed until he can do so safely. The foregoing requirements shall apply when:

(a) a clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train;

(b) a crossing gate is lowered or when a human flagman gives or continues to give a signal of the approach or passage of a railroad train;

(c) a railroad train approaching within approximately 1,500 feet of the highway crossing emits a signal audible from such distance and such railroad train, by reason of its speed or nearness to such crossing, is an immediate hazard;

(d) an approaching railroad train is plainly visible and is in hazardous proximity to such crossing.

(2) No person shall drive any vehicle through, around, or under any crossing gate or barrier at a railroad crossing while such gate or barrier is closed or is being opened or closed.

History: En. Sec. 88, Ch. 263, L. 1955; R.C.M. 1947, 32-2191.

61-8-348. All vehicles to stop at certain railroad grade crossings. The department of highways and local authorities may designate particularly dangerous highway grade crossings of railroads and erect stop signs at these crossings. When these stop signs are erected, the driver of a vehicle shall stop within 50 feet but not less than 15 feet from the nearest rail of the railroad and shall proceed only upon exercising due care.

History: En. Sec. 89, Ch. 263, L. 1955; amd. Sec. 64, Ch. 316, L. 1974; R.C.M. 1947, 32-2192.

61-8-349. Certain vehicles to stop at all railroad grade crossings. (1) All persons driving motor vehicles upon the public highways of this state outside of corporate limits of incorporated cities or towns where the view is obscure or when a moving train is within sight or hearing shall bring said vehicle to a full stop not less than 10 or more than 100 feet from where said highway intersects railroad tracks within this state, before crossing the same, at all crossings where a flagman or a mechanical device is not maintained to warn the traveling public of approaching trains or cars.

(2) The driver of any motor vehicle carrying passengers for hire or of any school bus or of any vehicle carrying explosive substances or flammable liquids as a cargo or part of a cargo, before crossing at grade any track or tracks of a railroad, shall stop such vehicle within 50 feet but not less than 15 feet from the nearest rail of such railroad and while so stopped shall open the door (in the case of a school bus) and shall listen and look in both directions along such track for any approaching train, and for signals indicating the approach of a train, except as hereinafter provided, and shall not proceed until he can do so safely. After stopping as required herein and upon proceeding when it is safe to do so, the driver of any said vehicle shall cross only in such gear of the vehicle that there will be no necessity for changing gears while traversing such crossings and the driver shall not shift gears while crossing the track or tracks.

(3) No stop need be made at any such crossing where a police officer or highway patrolman or traffic-control signal directs traffic to proceed.

(4) This section shall not apply at street-railway grade crossings within a business or residence district.

History: (1)En. Sec. 1, Ch. 151, L. 1919; re-en. Sec. 3842, R.C.M. 1921; re-en. Sec. 3842, R.C.M. 1935; amd. Sec. 1, Ch. 115, L. 1957; amd. Sec. 20, Ch. 315, L. 1974; Sec. 72-164, R.C.M. 1947; (2) thru (4)Ap p. Sec. 90, Ch. 263, L. 1955; amd. Sec. 1, Ch. 244, L. 1977; Sec. 32-2193, R.C.M. 1947; Ap. p. Sec. 284, Ch. 5, L. 1971; Sec. 75-7007, R.C.M. 1947; R.C.M. 1947, 32-2193, 72-164(part), 75-7007(part).

61-8-350. Moving heavy equipment at railroad grade crossings. (1) No person shall operate or move any crawler-type tractor, steam shovel, derrick, roller, or any equipment or structure having a normal operating speed of 10 or less miles per hour or a vertical body or load clearance of less than one-half inch per foot of the distance between any two adjacent axles or in any event of less than 9 inches, measured above the level surface of a roadway, upon or across any tracks at a railroad grade crossing without first complying with this section.

(2) Notice of any such intended crossing shall be given to a station agent of such railroad and reasonable time be given to such railroad to provide proper protection at such crossing.

(3) Before making any such crossing the person operating or moving any such vehicle or equipment shall first stop the same not less than 15 feet or more than 50 feet from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train and for signals indicating the approach of a train, and shall not proceed until the crossing can be made safely.

(4) No such crossing shall be made when warning is given by automatic signal or crossing gates or a flagman or otherwise of the immediate approach of a railroad train or car. If a flagman is provided by the railroad, movement over the crossing shall be under his direction.

History: En. Sec. 91, Ch. 263, L. 1955; R.C.M. 1947, 32-2194.

61-8-351. Meeting or passing school bus. (1) The driver of a vehicle upon a highway or street either inside or outside the corporate limits of any city or town upon meeting or overtaking from either direction any school bus which has stopped on the highway or street for the purpose of receiving or discharging any school children shall stop the vehicle not less than 10 feet before reaching such school bus when there is in operation on said bus a visual flashing red signal as specified in 61-9-402 and said driver shall not proceed until the children have entered the school bus or have alighted and reached the side of the highway or street on which they live and until such school bus resumes motion or the driver has signaled traffic to proceed. In addition the driver of a vehicle must slow and proceed with caution when meeting or overtaking from either direction any school bus which is preparing to stop on the highway or street for the purpose of receiving or discharging any school children as indicated by flashing amber lights as specified in 61-9-402.

(2) Every bus used for the transportation of school children shall bear upon the front and rear thereof plainly visible signs containing the words "SCHOOL BUS" in letters not less than 8 inches in height, and in addition shall be equipped with visual signals meeting the requirements of 61-9-402. Amber flashing lights shall be actuated by the driver approximately 150 feet in cities and approximately 500 feet in other areas before the bus is stopped to receive or discharge school children on the highway or street. Red lights shall be actuated by the driver of said school bus whenever but only whenever such vehicle is stopped on the highway or street whether inside or outside the corporate limits of any city or town for the purpose of receiving or discharging school children. However, a school district board of trustees may, in its discretion, adopt a policy prohibiting the operation of amber or red lights when a bus is stopped at the school site for purposes of receiving or discharging school children and such receipt or discharge does not involve street crossing by the children; and such lights may not be operated in violation of such a policy.

(3) When a school bus is being operated upon a highway for purposes other than the actual transportation of children either to or from school all markings thereon indicating "SCHOOL BUS" shall be covered or concealed.

(4) The driver of a vehicle upon a highway with separate roadways need not stop upon meeting or passing a school bus which is on a different roadway or when upon a controlled-access highway and the school bus is stopped in a loading zone which is a part of or adjacent to such highway and where pedestrians are not permitted to cross the roadway.

History: Ap. p. Sec. 94, Ch. 263, L. 1955; amd. Sec. 1, Ch. 100, L. 1961; amd. Sec. 2, Ch. 250, L. 1965; amd. Sec. 1, Ch. 45, L. 1971; amd. Sec. 2, Ch. 244, L. 1977; Sec. 32-2197, R.C.M. 1947; Ap. p. Sec. 284, Ch. 5, L. 1971; Sec. 75-7007, R.C.M. 1947; R.C.M. 1947, 32-2197, 75-7007(part); amd. Sec. 1, Ch. 305, L. 1979.

61-8-352. Prohibited operation of special lighting equipment on school buses. It shall be unlawful to operate any flashing prewarning or warning signal light on any school bus except when the school bus is preparing to stop or is stopped on a highway for the purpose of permitting school children to board or alight from said school bus.

History: Ap. p. Sec. 95, Ch. 263, L. 1955; amd. Sec. 3, Ch. 250, L. 1965; Sec. 32-2198, R.C.M. 1947; Ap. p. Sec. 284, Ch. 5, L. 1971; Sec. 32-2198, R.C.M. 1947; R.C.M. 1947, 32-2198, 75-7007(part).

61-8-353. Stopping, standing, or parking outside of business or residence districts. (1) Upon any highway outside of a business or residence district no person shall stop, park, or leave standing any vehicle, whether attended or unattended, upon the paved or main-traveled part of the highway when it is practical to stop, park, or so leave such vehicle off such part of said highway, but in every event an unobstructed width of the highway opposite a standing vehicle shall be left for the free passage of other vehicles. No person shall stop, stand, or park any vehicle upon such highway unless such vehicle can be seen by the driver of any other vehicle approaching from either direction within 500 feet and unless drivers approaching from opposite directions are visible to each other when both are at least 500 feet from the vehicle to be stopped, turned, or parked, except in cases of justifiable emergency.

(2) This section shall not apply to the driver of any vehicle which is disabled while on the paved or main-traveled portion of a highway in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving such disabled vehicle in such position.

History: **En. Sec. 96, Ch. 263, L. 1955; R.C.M. 1947, 32-2199.**

61-8-354. Stopping, standing, or parking prohibited in specified places — exceptions. (1) No person shall stop, stand, or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with law or the directions of a police officer or highway patrolman or traffic-control device, in any of the following places:

(a) on a sidewalk;

(b) in front of a public or private driveway;

(c) within an intersection;

(d) within 15 feet of a fire hydrant;

(e) on a crosswalk;

(f) within 20 feet of a crosswalk at an intersection;

(g) within 30 feet upon the approach to any flashing beacon, stop sign, or traffic-control signal located at the side of a roadway;

(h) between a safety zone and the adjacent curb or within 30 feet of points on the curb immediately opposite the ends of a safety zone, unless the local authorities indicate a different length by signs or markings;

(i) within 50 feet of the nearest rail of a railroad crossing;

(j) within 20 feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within 75 feet of said entrance when properly signposted;

(k) alongside or opposite any street excavation or obstruction when stopping, standing, or parking would obstruct traffic;

(l) on the roadway side of any vehicle stopped or parked at the edge or curb of a street;

(m) upon any bridge or other elevated structure upon a highway or within a highway tunnel;

(n) at any place where official signs prohibit stopping.

(2) A public bus stop may not be established in the areas described in subsections (1)(a) through (c) and (e). Otherwise, this section does not prohibit the establishment of public bus stops and the regulation of their use by a local government. Such a bus stop must be established by ordinance pursuant to a traffic and engineering study. Such establishment is subject to review and approval by the department of highways if the bus stop is to be established on a street or highway under its jurisdiction.

(3) No person shall move a vehicle not lawfully under his control into any such prohibited area or away from a curb such distance as is unlawful.

History: En. Sec. 98, Ch. 263, L. 1955; R.C.M. 1947, 32-21-101; amd. Sec. 1, Ch. 417, L. 1981.

Compiler's Comments

1981 Amendment: Inserted subsection (2) relating to bus stops.

Effective Date: Section 2, Ch. 417, L. 1981, provided: "This act is effective on passage and approval." Approved April 17, 1981.

61-8-355. Additional parking regulations. (1) Except as otherwise provided in this section, a vehicle stopped or parked upon a roadway where there are adjacent curbs shall be stopped or parked with the right-hand wheels of the vehicle parallel to and within 18 inches of the right-hand curb.

(2) A local authority may by ordinance permit parking of a vehicle with the left-hand wheels adjacent to and within 18 inches of the left-hand curb of a one-way roadway.

(3) A local authority may by ordinance permit angle parking on a roadway, except that angle parking shall not be permitted on any federal-aid or state highway unless the department of highways determines that the roadway is of sufficient width to permit angle parking without interfering with the free movement of traffic.

(4) The department with respect to highways under its jurisdiction may place signs prohibiting or restricting the stopping, standing, or parking of vehicles on a highway where in its opinion this stopping, standing, or parking is dangerous to those using the highway or where the stopping, standing, or parking of vehicles would unduly interfere with the free movement of traffic on it. These signs shall be official signs, and a person may not stop, stand, or park a vehicle in violation of the restrictions stated on these signs.

History: En. Sec. 99, Ch. 263, L. 1955; amd. Sec. 66, Ch. 316, L. 1974; R.C.M. 1947, 32-21-102.

61-8-356. Prohibition against parking or leaving vehicles on public property. No vehicle shall be parked or left standing upon the right-of-way of any public highway for a period longer than 48 hours, or upon a city street, or any state, county, or city property for a period longer than 5 days.

History: En. Sec. 1, Ch. 288, L. 1967; amd. Sec. 1, Ch. 169, L. 1969; R.C.M. 1947, 53-901.

61-8-357. Unattended motor vehicles. No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine and effectively setting the brake thereon and, when standing upon any grade, turning the front wheels to the curb or side of the highway in such a manner as to prevent the vehicle from rolling onto the roadway.

History: En. Sec. 100, Ch. 263, L. 1955; R.C.M. 1947, 32-21-103.

61-8-358. Limitations on backing. The driver of a vehicle shall not back the same unless such movement can be made with reasonable safety and without interfering with other traffic.

History: En. Sec. 101, Ch. 263, L. 1955; R.C.M. 1947, 32-21-104.

61-8-359. Riding on motorcycles. (1) A person operating a motorcycle on public streets or highways shall ride only upon the permanent and regular seat attached thereto, and such operator shall not carry any other person; nor shall any other person ride on a motorcycle unless such motorcycle is designed to carry more than one person, in which event a passenger may ride upon the permanent and regular seat if designed for two persons or upon another seat firmly attached to the rear or side of the operator.

(2) No passenger shall be carried in a position that will interfere with the operation of the motorcycle or the view of the operator.

(3) No person operating a motorcycle shall carry any packages, bundles, or articles which would interfere with the operation of said vehicle in a safe and prudent manner.

(4) "Side saddle" riding on a motorcycle is prohibited.

(5) Motorcycles are to be operated with lights on at all times when operated on any public highway or street.

(6) Not more than two motorcycles shall be operated side by side in a single traffic lane.

(7) All motor vehicles, including motorcycles, are entitled to the full use of a traffic lane, and no vehicle shall be driven or operated in such a manner so as to deprive any other vehicle of the full use of a traffic lane, except that motorcycles may, with the consent of both drivers, be operated not more than two abreast in a single traffic lane.

(8) Every person riding a motorcycle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a motor vehicle except as to those provisions which, by their nature, can have no application.

History: En. Sec. 102, Ch. 263, L. 1955; amd. Sec. 1, Ch. 175, L. 1967; R.C.M. 1947, 32-21-105.

61-8-360. Obstruction to driver's view or driving mechanism. (1) No person shall drive a vehicle when it is so loaded, or when there are in the front seat such number of persons exceeding three, as to obstruct the view of the driver to the front or sides of the vehicle or as to interfere with the driver's control over the driving mechanism of the vehicle.

(2) No passenger in a vehicle shall ride in such position as to interfere with the driver's view ahead or to the sides or to interfere with his control over the driving mechanism of the vehicle.

History: En. Sec. 103, Ch. 263, L. 1955; R.C.M. 1947, 32-21-106.

61-8-361. Driving on mountain highways. The driver of a motor vehicle traveling through defiles or canyons or on mountain highways shall hold such motor vehicle under control and as near the right-hand edge of the highway as reasonably possible.

History: En. Sec. 104, Ch. 263, L. 1955; R.C.M. 1947, 32-21-107.

61-8-362. Coasting prohibited. The driver of any motor vehicle when traveling upon a downgrade shall not coast with the gears of such vehicle in neutral or with the clutch manually disengaged.

History: En. Sec. 105, Ch. 263, L. 1955; R.C.M. 1947, 32-21-108.

61-8-363. Following fire apparatus prohibited. The driver of any vehicle other than one on official business shall not follow any fire apparatus traveling in response to a fire alarm closer than 500 feet or drive into or park such vehicle within the block where fire apparatus has stopped in answer to a fire alarm.

History: **En. Sec. 106, Ch. 263, L. 1955; R.C.M. 1947, 32-21-109.**

61-8-364. Crossing firehose. No vehicle shall be driven over any unprotected hose of a fire department when laid down on any street or private driveway, to be used at any fire or alarm of fire, without the consent of the fire department official in command.

History: **En. Sec. 107, Ch. 263, L. 1955; R.C.M. 1947, 32-21-110.**

61-8-365. Putting refuse on highway prohibited. (1) No person shall throw or deposit upon any highway any glass bottles, glass, nails, tacks, wire, cans, paper, or any other substance likely to injure any person, animal, or vehicle upon such highway.

(2) Any person who drops or permits to be dropped or thrown upon any highway any destructive or injurious material shall immediately remove the same or cause it to be removed.

(3) Any person removing a wrecked or damaged vehicle from a highway shall remove any glass or other injurious substance dropped upon the highway from such vehicle.

(4) A person convicted of violating this section shall be fined not less than $50. Except for the minimum fine of $50 as provided in this subsection, the penalty provisions of 61-8-711 apply to this section.

History: **En. Sec. 108, Ch. 263, L. 1955; R.C.M. 1947, 32-21-111; amd. Sec. 1, Ch. 510, L. 1979.**

61-8-366. Riding on fenders or running boards prohibited. Any person driving a vehicle shall not permit passengers to ride on the fenders or running boards, nor shall any passenger ride on the fenders or running boards of a vehicle.

History: **En. Sec. 109, Ch. 263, L. 1955; R.C.M. 1947, 32-21-112.**

61-8-367. Riding in housetrailers. No person or persons may occupy a housetrailer while it is being moved upon a public highway unless the trailer is of a semitrailer design where some part of its own weight and that of its cargo rests upon or is carried by its towing unit through the use of a fifth-wheel type trailer hitch mounted on no less than a one-half ton rated truck.

History: **En. Sec. 109.1, Ch. 263, L. 1955, as added by Sec. 1, Ch. 167, L. 1957; amd. Sec. 1, Ch. 21, L. 1975; R.C.M. 1947, 32-21-112.1.**

61-8-368. Opening and closing vehicle doors. No person shall open the door of a motor vehicle on the side available to moving traffic unless and until it is reasonably safe to do so, nor shall any person leave a door open on the side of a vehicle available to moving traffic for a period of time longer than necessary to load or unload passengers.

History: **En. Sec. 109.2, Ch. 263, L. 1955, as added by Sec. 1, Ch. 167, L. 1957; R.C.M. 1947, 32-21-112.2.**

61-8-369. Shooting from or across highway. No person shall shoot any firearm from or across the roadway of any state or federal highway or county road.

History: **En. Sec. 110, Ch. 263, L. 1955; amd. Sec. 1, Ch. 25, L. 1974; R.C.M. 1947, 32-21-113.**

Part 4

Driving Under Influence of Alcohol or Drugs

61-8-401. Persons under the influence of alcohol or drugs. (1) It is unlawful and punishable as provided in 61-8-714(1) for any person who is under the influence of:

(a) alcohol to drive or be in actual physical control of a motor vehicle upon the highways of this state;

(b) a narcotic drug to drive or be in actual physical control of a motor vehicle within this state; or

(c) any other drug to a degree which renders him incapable of safely driving a motor vehicle to drive or be in actual physical control of a motor vehicle within this state.

(2) The fact that any person charged with a violation of subsection (1) is or has been entitled to use such a drug under the laws of this state does not constitute a defense against any charge of violating subsection (1).

(3) In any criminal prosecution for a violation of subsection (1) of this section relating to driving a vehicle while under the influence of alcohol, the amount of alcohol in the defendant's blood at the time alleged, as shown by chemical analysis of the defendant's blood, urine, breath, or other bodily substance, shall give rise to the following presumptions:

(a) If there was at that time 0.05% or less by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was not under the influence of alcohol.

(b) If there was at that time in excess of 0.05% but less than 0.10% by weight of alcohol in the defendant's blood, that fact shall not give rise to any presumption that the defendant was or was not under the influence of alcohol but such fact may be considered with other competent evidence in determining the guilt or innocence of the defendant.

(c) If there was at that time 0.10% or more by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was under the influence of alcohol.

(4) Percent by weight of alcohol in the blood shall be based upon grams of alcohol per 100 cubic centimeters of blood.

(5) Each municipality in this state is given authority to enact 61-8-714 and subsections (1) through (4) of this section with the word "state" in subsection (1) of this section changed to read "municipality", as an ordinance and is given jurisdiction of the enforcement of the ordinance and of the imposition of the fines and penalties therein provided.

History: En. Sec. 39, Ch. 263, L. 1955; amd. Sec. 1, Ch. 194, L. 1957; amd. Sec. 3, Ch. 201, L. 1957; amd. Sec. 1, Ch. 109, L. 1961; amd. Sec. 1, Ch. 132, L. 1971; amd. Sec. 1, Ch. 289, L. 1977; amd. Sec. 1, Ch. 430, L. 1977; R.C.M. 1947, 32-2142(part); amd. Sec. 69, Ch. 421, L. 1979.

61-8-402. Chemical blood, breath, or urine tests. (1) Any person who operates a motor vehicle upon the public highways of this state shall be deemed to have given consent, subject to the provisions of 61-8-401, to a chemical test of his blood, breath, or urine for the purpose of determining the alcoholic content of his blood if arrested by a peace officer for driving or in actual physical control of a motor vehicle while under the influence of alcohol. The test shall be administered at the direction of a peace officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle upon the public highways of this state while under the influence of alcohol. The arresting officer may designate which one of the aforesaid tests shall be administered.

(2) Any person who is unconscious or who is otherwise in a condition rendering him incapable of refusal shall be deemed not to have withdrawn the consent provided by subsection (1) of this section.

(3) If a person under arrest refuses upon the request of a peace officer to submit to a chemical test designated by the arresting officer as provided in subsection (1) of this section, none shall be given, but the division, upon the receipt of a sworn report of the peace officer that he had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle upon the public highways of this state while under the influence of alcohol and that the person had refused to submit to the test upon the request of the peace officer, shall suspend the license or driving privilege of such person on the highways of this state for a period of 60 days. Like refusal by a nonresident shall be subject to suspension by the division in like manner. All such suspensions are subject to review as hereinafter provided.

History: En. Sec. 1, Ch. 131, L. 1971; R.C.M. 1947, 32-2142.1; amd. Sec. 1, Ch. 103, L. 1981.

Compiler's Comments
1981 Amendment: Substituted "alcohol" for "intoxicating liquor" throughout.

61-8-403. Right of appeal to court. The division shall immediately notify any person whose license or privilege to drive has been suspended, as hereinbefore authorized, in writing and such person shall have the right to file a petition within 30 days thereafter for a hearing in the matter in the district court in the county wherein such person shall reside. Such court is hereby vested with jurisdiction and it shall be its duty to set the matter for hearing upon 30 days' written notice to the county attorney of the county wherein the appeal is filed and such county attorney shall represent the state, and thereupon the court shall take testimony and examine into the facts of the case, except that the issues shall be limited to whether a peace officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle upon the public highways while under the influence of alcohol, whether the person was placed under arrest, and whether such person refused to submit to the test. The court shall thereupon determine whether the petitioner is entitled to a license or is subject to suspension as heretofore provided.

History: En. Sec. 2, Ch. 131, L. 1971; R.C.M. 1947, 32-2142.2(a); amd. Sec. 2, Ch. 103, L. 1981.

Compiler's Comments
1981 Amendment: Substituted "alcohol" for "intoxicating liquor".

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61-8-404. Evidence admissible. (1) Upon the trial of any criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a motor vehicle while under the influence of alcohol, evidence of the amount of alcohol in the person's blood at the time of the act alleged as shown by a chemical analysis of his blood, breath, or urine is admissible.

(2) If the person under arrest refused to submit to the test as hereinabove provided, proof of refusal shall be admissible in any criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a motor vehicle upon the public highways while under the influence of alcohol.

(3) The provisions of this part do not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of alcohol.

History: En. Sec. 2, Ch. 131, L. 1971; R.C.M. 1947, 32-2142.2(b) thru (d); amd. Sec. 3, Ch. 103, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "alcohol" for "intoxicating liquor" throughout.

61-8-405. Administration of tests. (1) Only a physician or registered nurse or other qualified person under the supervision and direction of a physician or registered nurse acting at the request of a peace officer may withdraw blood for the purpose of determining the alcoholic content therein. This limitation shall not apply to the taking of breath or urine specimens.

(2) The person tested may, at his own expense, have a physician or registered nurse of his own choosing administer a test, in addition to any administered at the direction of a peace officer, for the purpose of determining the amount of alcohol in his blood at the time alleged as shown by chemical analysis of his blood, breath, or urine. The failure or inability to obtain an additional test by a person shall not preclude the admissibility in evidence of the test taken at the direction of a peace officer.

(3) Upon the request of the person tested full information concerning the test taken at the direction of the peace officer shall be made available to him or his attorney.

(4) No physician or registered nurse or other qualified person under the supervision and direction of a physician or registered nurse shall incur any civil or criminal liability as a result of the proper administering of a blood test when requested in writing by a peace officer to administer such a test.

(5) If the test given under 61-8-402 is a chemical test of urine, the person tested shall be given such privacy in the taking of the urine specimen as will insure the accuracy of the specimen and, at the same time, maintain the dignity of the individual involved.

(6) The division of motor vehicles in cooperation with the division of forensic sciences, or any other appropriate agency, shall adopt uniform rules for the giving of blood alcohol tests and may require certification of training to administer such tests as deemed necessary.

History: En. Sec. 3, Ch. 131, L. 1971; R.C.M. 1947, 32-2142.3; amd. Sec. 4, Ch. 103, L. 1981.

Compiler's Comments

1981 Amendment: Added "or other qualified person under the supervision and direction of a physician or registered nurse" near the beginning of (1) and (4); substituted "division of forensic sciences" for "state board of health and environmental sciences" and "rules" for "standards" in (6).

Part 5

Pedestrian Traffic

61-8-501. Pedestrians subject to traffic regulations. (1) Pedestrians shall be subject to traffic-control signals at intersections as provided in 61-8-207 unless required by local ordinance to comply strictly with such signals, but at all other places pedestrians shall be accorded the privileges and shall be subject to the restrictions stated in this part.

(2) Local authorities are hereby empowered by ordinance to require that pedestrians shall strictly comply with the directions of any official traffic-control signal and may by ordinance prohibit pedestrians from crossing any roadway in a business district or any designated highways except in a crosswalk.

History: En. Sec. 73, Ch. 263, L. 1955; R.C.M. 1947, 32-2176.

61-8-502. Pedestrians' right-of-way in crosswalk. (1) When traffic-control signals are not in place or not in operation, the driver of a vehicle shall yield the right-of-way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger, but no pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield. This provision shall not apply under the conditions stated in 61-8-503(2).

(2) Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle.

(3) It is unlawful for any person to drive a motor vehicle through a column of school children crossing a street or highway or past a member of the school safety patrol while the member of the school safety patrol is directing the movement of children across a street or highway and while the school safety patrol member is holding his official signal in the stop position.

History: En. Sec. 74, Ch. 263, L. 1955; amd. Sec. 1, Ch. 54, L. 1965; R.C.M. 1947, 32-2177.

61-8-503. Crossing at other than crosswalks. (1) Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway.

(2) Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right-of-way to all vehicles upon the roadway.

(3) Between adjacent intersections at which traffic-control signals are in operation pedestrians shall not cross at any place except in a marked crosswalk.

History: En. Sec. 75, Ch. 263, L. 1955; R.C.M. 1947, 32-2178.

61-8-504. Drivers to exercise due care. Notwithstanding the foregoing provisions of this part, every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway and shall give warning by sounding the horn when necessary and shall exercise proper precaution upon observing any child or any confused or incapacitated person upon a roadway.

History: **En. Sec. 76, Ch. 263, L. 1955; R.C.M. 1947, 32-2179.**

61-8-505. Pedestrians to use right half of crosswalk. Pedestrians shall move, whenever practicable, upon the right half of crosswalks.

History: **En. Sec. 77, Ch. 263, L. 1955; R.C.M. 1947, 32-2180.**

61-8-506. Pedestrians on roadways. (1) Where sidewalks are provided, it shall be unlawful for any pedestrian to walk along and upon an adjacent roadway.

(2) Where sidewalks are not provided, any pedestrian walking along and upon a highway shall, when practicable, walk only on the left side of the roadway or its shoulder facing traffic which may approach from the opposite direction.

History: **En. Sec. 78, Ch. 263, L. 1955; R.C.M. 1947, 32-2181.**

61-8-507. Pedestrian soliciting rides or business. (1) No person shall stand in a roadway for the purpose of soliciting a ride, employment, or business from the occupant of any vehicle.

(2) No person shall stand on or in proximity to a street or highway for the purpose of soliciting the watching or guarding of any vehicle while parked or about to be parked on a street or highway.

History: **En. Sec. 79, Ch. 263, L. 1955; R.C.M. 1947, 32-2182.**

61-8-508. Intoxicated pedestrian. No person shall walk upon or along the highway while under the influence of intoxicating liquor.

History: **En. Sec. 80, Ch. 263, L. 1955; R.C.M. 1947, 32-2183.**

Part 6

Bicycle Traffic

61-8-601. Effect of regulations. (1) It is a misdemeanor for any person to do any act forbidden or fail to perform any act required in this part.

(2) These regulations applicable to bicycles shall apply whenever a bicycle is operated upon any highway or upon any path set aside for the exclusive use of bicycles subject to those exceptions stated herein.

History: **En. Sec. 81, Ch. 263, L. 1955; R.C.M. 1947, 32-2184.**

61-8-602. Traffic laws applicable to persons riding bicycles. Every person riding a bicycle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this chapter and chapter 9 except as to special regulations in this part and except as to those provisions of this chapter and chapter 9 which by their very nature can have no application.

History: **En. Sec. 82, Ch. 263, L. 1955; R.C.M. 1947, 32-2185.**

61-8-603. Riding on bicycles. A person propelling a bicycle shall not ride other than upon or astride a permanent and regular seat attached thereto.

History: **En. Sec. 83, Ch. 263, L. 1955; R.C.M. 1947, 32-2186.**

61-8-604. Clinging to vehicles. No person riding upon any bicycle, coaster, roller skates, sled, or toy vehicle shall attach the same or himself to any vehicle upon a roadway.

History: **En. Sec. 84, Ch. 263, L. 1955; R.C.M. 1947, 32-2187.**

61-8-605. Riding on roadways and bicycle paths. (1) Every person operating a bicycle upon a roadway shall ride as near to the right side of the roadway as practicable, exercising due care when passing a standing vehicle or one proceeding in the same direction.

(2) Persons riding bicycles upon a roadway shall ride in single file except on paths or parts of roadways set aside for the exclusive use of bicycles. A person riding a bicycle may overtake and pass another bicycle when safe to do so and when other traffic is not obstructed by so doing.

(3) Whenever a usable path for bicycles has been provided adjacent to a roadway, bicycle riders shall use such path and shall not use the roadway. A person riding a bicycle defined in 61-1-123(2) is excluded from the provisions of this subsection when such bicycle is prohibited from using such paths.

(4) A bicycle, as defined in 61-1-123(2), is excluded from the provisions of subsections (1) and (2).

History: **En. Sec. 85, Ch. 263, L. 1955; amd. Sec. 1, Ch. 110, L. 1975; R.C.M. 1947, 32-2188; amd. Sec. 8, Ch. 508, L. 1979.**

61-8-606. Carrying articles. No person operating a bicycle shall carry any package, bundle, or article which prevents the driver from keeping at least one hand upon the handle bars.

History: **En. Sec. 86, Ch. 263, L. 1955; R.C.M. 1947, 32-2189.**

61-8-607. Lamps and other equipment on bicycles. (1) Every bicycle when in use at nighttime shall be equipped with a lamp on the front which shall emit a white light visible from a distance of at least 500 feet to the front. A lamp emitting a red light visible from a distance of 500 feet to the rear may be used in addition to rear-facing reflectors required by this section.

(2) Every bicycle when in use at nighttime shall be equipped with an essentially colorless front-facing reflector, essentially colorless or amber pedal reflectors, and a red rear-facing reflector. Pedal reflectors shall be mounted on the front and back of each pedal.

(3) Every bicycle when in use at nighttime shall be equipped with either tires with retroflective sidewalls or reflectors mounted on the spokes of each wheel. Spoke mounted reflectors shall be within 76 millimeters (3 inches) of the inside of the rim and shall be visible on each side of the wheel. The reflectors on the front wheel shall be essentially colorless or amber and the reflectors on the rear wheel shall be amber or red.

(4) Reflectors required by this section shall be of a type approved by the division of motor vehicles.

(5) Every bicycle shall be equipped with a brake which will enable the operator to make the braked wheels skid on dry, level, clean pavement.

(6) Every bicycle is encouraged to be equipped with a flag clearly visible from the rear and suspended not less than 6 feet above the roadway when the bicycle is standing upright. The flag shall be fluorescent orange in color.

History: **En. Sec. 87, Ch. 263, L. 1955; amd. Sec. 1, Ch. 351, L. 1975; R.C.M. 1947, 32-2190.**

Part 7

Enforcement — Penalties

61-8-701. Charging violations. In every charge of a violation of any speed regulation in this chapter the complaint, and also the summons or notice to appear shall specify the speed at which the defendant is alleged to have driven, also the speed applicable within the district or at the location.

History: **En. Sec. 47, Ch. 263, L. 1955; R.C.M. 1947, 32-2150.**

61-8-702. Use of radar — evidence admissible. The speed of any motor vehicle may be measured by the use of radio microwaves or other electrical device. The results of such measurements shall be accepted as evidence of the speed of such motor vehicle in any court or legal proceedings where the speed of the motor vehicle is at issue.

History: **En. Sec. 1, Ch. 120, L. 1959; R.C.M. 1947, 32-2150.1.**

61-8-703. Arrest without a warrant in radar cases. (1) The driver of any such motor vehicle may be arrested without a warrant under this section provided the arresting officer is in uniform or displays his badge of authority and has either:

(a) observed the recording of the speed of the vehicle by radio microwaves or other electrical device; or

(b) received, from the officer who has observed the speed of the vehicle recorded by the radio microwaves or other electrical device, a radio message giving the license number or other sufficient identification of the vehicle and the recorded speed, dispatched immediately after the speed of the vehicle was recorded.

(2) The arrest without a warrant of any such driver must be made immediately after such observation or radio message and as the result of uninterrupted pursuit.

History: **En. Sec. 2, Ch. 120, L. 1959; R.C.M. 1947, 32-2150.2.**

61-8-704. Erection of signs. (1) No operator of a motor vehicle may be arrested under 61-8-703 unless signs have been placed at or near the state line on the primary highway system, outside towns or cities having over 2,500 population, and outside county seats on the primary highways to indicate the legal rate of speed.

(2) Any municipality which uses radio microwaves or other electrical device for law enforcement purposes shall erect and maintain appropriate signs giving notice of such use at a conspicuous place at or near the corporate limits of the municipality, upon each state highway and arterial street or highway entering the municipality, and at such other places as may be

deemed necessary by the municipal authorities for the information of the traveling public.

(3) Signs giving notice that the speed of vehicles may be measured by radio microwaves or other electrical device shall be placed as required for speed signs in subsection (1) above. However, the absence of such signs shall not in itself invalidate an otherwise proper arrest.

History: En. Sec. 3, Ch. 120, L. 1959; amd. Sec. 1, Ch. 205, L. 1974; R.C.M. 1947, 32-2150.3.

61-8-705. Officers or highway patrolmen authorized to remove illegally stopped vehicles. (1) Whenever any police officer or highway patrolman finds a vehicle standing upon a highway in violation of any of the provisions of 61-8-353 through 61-8-355, such officer or highway patrolman is hereby authorized to move such vehicle or require the driver or other person in charge of the vehicle to move the same to a position off the paved or main-traveled part of such highway.

(2) Whenever any police officer or highway patrolman finds a vehicle unattended upon any bridge or roadway or in any tunnel where such vehicle constitutes an obstruction to traffic, such officer or highway patrolman is hereby authorized to provide for the removal of such vehicle pursuant to Title 61, chapter 12, part 4, except that the time limits imposed in 61-12-401 do not apply to removal under this subsection.

History: En. Sec. 97, Ch. 263, L. 1955; R.C.M. 1947, 32-21-100; amd. Sec. 1, Ch. 71, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "roadway" for "causeway" near beginning of (2) and the final phrase beginning with "pursuant to Title 61 . . ." for "to the nearest place of safety".

61-8-706. Removal of unauthorized sign. (1) An unauthorized sign, emblem, marker, or traffic-control device or portion thereof encroaching into, over, or upon a right-of-way of a state highway or controlled-access highway is a public nuisance, and the department may remove it or cause it to be removed without notice and without liability for the removal.

(2) Every sign, signal, or marking prohibited by 61-8-210 is hereby declared to be a public nuisance and the authority having jurisdiction over the highway is hereby empowered to remove the same or cause it to be removed without notice.

History: (1)En. Sec. 31, Ch. 263, L. 1955; amd. Sec. 1, Ch. 224, L. 1959; amd. Sec. 53, Ch. 316, L. 1974; Sec. 32-2134, R.C.M. 1947; (2)En. Sec. 37, Ch. 263, L. 1955; Sec. 32-2140, R.C.M. 1947; R.C.M. 1947, 32-2134(f), 32-2140(e).

61-8-707 through 61-8-710 reserved.

61-8-711. Violation of chapter — penalty. (1) It is a misdemeanor for any person to violate any of the provisions of this chapter unless the violation is declared to be a felony by this chapter or other law of this state.

(2) Every person convicted of a misdemeanor for a violation of any of the provisions of this chapter for which another penalty is not provided shall for a first conviction thereof be punished by a fine of not less than $10 or more than $100 or by imprisonment for not more than 10 days. For a second conviction within 1 year thereafter, the person shall be punished by a fine of not less than $25 or more than $200 or by imprisonment for not more than 20 days or by both such fine and imprisonment. Upon a third or subsequent

conviction within 1 year after the first conviction, the person shall be punished by a fine of not less than $50 or more than $500 or by imprisonment for not more than 6 months or by both such fine and imprisonment.

(3) On failure of payment of a fine, the offender in case of a misdemeanor shall be imprisoned in the county jail in the county in which the offense was committed, and the imprisonment shall be computed upon the basis of one day's incarceration for each $2 of the fine.

(4) Upon conviction, the court costs or any part thereof may be assessed against the defendant in the discretion of the court.

History: En. Sec. 154, Ch. 263, L. 1955; R.C.M. 1947, 32-21-157; amd. Sec. 70, Ch. 421, L. 1979.

61-8-712. Penalty for erection of unauthorized sign. The erection of a sign, emblem, marker, or traffic-control device in violation of 61-8-203 is a misdemeanor, punishable by a fine of not less than $25 or more than $300.

History: En. Sec. 31, Ch. 263, L. 1955; amd. Sec. 1, Ch. 224, L. 1959; amd. Sec. 53, Ch. 316, L. 1974; R.C.M. 1947, 32-2134(e).

61-8-713. Injury to or removal of sign or marker a misdemeanor — penalty. (1) Every person who maliciously injures, defaces, damages, or removes any sign, signal, or marker, either temporarily or permanently erected on the right-of-way of any secondary, state, or interstate highway for warning, instruction, or information of the public, is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of $250 or by imprisonment in the county jail for a period not exceeding 60 days or by both such fine and imprisonment in the discretion of the court. This section applies to secondary, state, or interstate highways which are completed and to secondary, state, or interstate highways which are under construction or repair.

(2) No person shall, without lawful authority, attempt to or in fact alter, deface, injure, knock down, or remove any official traffic-control device or any railroad sign or signal or any inscription, shield, or insignia thereon or any part thereof.

History: (1)En. Sec. 1, Ch. 184, L. 1965; Sec. 32-2134.1, R.C.M. 1947; (2)En. Sec. 38, Ch. 263, L. 1955; Sec. 32-2141, R.C.M. 1947; R.C.M. 1947, 32-2134.1, 32-2141.

61-8-714. Penalty for driving while intoxicated. (1) A person convicted of a violation of 61-8-401 may, in the discretion of the court, be punished by imprisonment in the county jail for up to 24 hours, and shall be punished by a fine of not less than $100 or more than $500. The jail sentence may not be suspended unless the judge finds that the imposition of the jail sentence will pose a risk to the defendant's physical or mental well-being.

(2) On a second conviction, he shall be punished by a fine of not less than $300 or more than $500 and by imprisonment for not less than 7 days or more than 30 days. Three days of the jail sentence may not be suspended unless the judge finds that the imposition of the jail sentence will pose a risk to the defendant's physical or mental well-being.

(3) On the third or subsequent conviction, he shall be punished by imprisonment for a term of not less than 30 days or more than 1 year, to which may be added, in the discretion of the court, a fine of not less than $500 or more than $1,000. Notwithstanding any provision to the contrary

providing for suspension of execution of a sentence imposed under this subsection, the imposition or execution of the first 10 days of the jail sentence imposed for a third or subsequent offense that occurred within 5 years of the first offense may not be deferred or suspended.

(4) In addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of institutions, which may include alcohol or drug treatment, or both, if considered necessary by the counselor conducting the program. Each counselor providing such education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a course or treatment program. If the defendant fails to attend the course or the treatment program, the counselor shall notify the court of the failure.

(5) For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of this section if less than 5 years have elapsed between the commission of the present offense and a previous conviction. If there has been no additional conviction for an offense under this section for a period of 5 years after a prior conviction hereunder, then such prior offense shall be expunged from the defendant's record.

History: En. Sec. 39, Ch. 263, L. 1955; amd. Sec. 1, Ch. 194, L. 1957; amd. Sec. 3, Ch. 201, L. 1957; amd. Sec. 1, Ch. 109, L. 1961; amd. Sec. 1, Ch. 132, L. 1971; amd. Sec. 1, Ch. 289, L. 1977; amd. Sec. 1, Ch. 430, L. 1977; R.C.M. 1947, 32-2142(3), (4); amd. Sec. 1, Ch. 56, L. 1979; amd. Sec. 1, Ch. 301, L. 1979; amd. Sec. 1, Ch. 451, L. 1981.

Compiler's Comments

1981 Amendment: In (1), substituted "A person convicted" for "Every person who is convicted", substituted "may, in the discretion of the court" for "shall", inserted "by imprisonment in the county jail for up to 24 hours, and shall be punished" in the first sentence, and added the second sentence; in (2), substituted "and by" for "to which may be added, in the discretion of the court" before "imprisonment" in the first sentence, substituted "for a term of not less than 7 days or more" for "for a term not more" in the first sentence, and added the second sentence; in (4), substituted the first sentence for "Except as otherwise provided in this section, the court may, in its discretion, suspend the execution of any sentence imposed under subsection (1) on the condition that the defendant successfully complete a course in a driver improvement school approved by the court or an alcohol treatment program approved by the department of institutions", substituted "counselor" for "school or institution" in the second sentence, substituted "enrolled in a course" for "accepted by the school" in the second sentence, and in the last sentence substituted "course" for "school" and "counselor" for "school or institution"; and in (5), added the last sentence.

61-8-715. Reckless driving — penalty. (1) A person convicted of reckless driving under 61-8-301(1)(a) shall be punished upon a first conviction by imprisonment for a period of not more than 90 days or by fine of not less than $25 or more than $300 or by both such fine and imprisonment, and on a second or subsequent conviction shall be punished by imprisonment for not less than 10 days or more than 6 months or by a fine of not less than $50 or more than $500 or by both such fine and imprisonment.

(2) A person convicted of reckless driving under 61-8-301(1)(b) shall be punished by imprisonment in the county or city jail for not less than 10 days or more than 6 months to which may be added at the discretion of the court a fine of not less than $300 or more than $500. On a second or subsequent conviction, he shall be punished by imprisonment for a term of not less than

30 days or more than 1 year to which may be added at the discretion of the court a fine of not less than $500 or more than $1,000.

History: **En. Sec. 40, Ch. 263, L. 1955; amd. Sec. 4, Ch. 201, L. 1957; amd. Sec. 1, Ch. 287, L. 1977; R.C.M. 1947, 32-2143(2), (3).**

61-8-716. Careless driving — penalty. A person violating the provisions of 61-8-302 is guilty of the offense of careless driving and shall be punishable as provided in 61-8-711.

History: **En. 32-2143.4 by Sec. 2, Ch. 294, L. 1977; R.C.M. 1947, 32-2143.4.**

61-8-717. Penalty for unauthorized drag racing. Any person convicted for violation of 61-8-308 shall be guilty of a misdemeanor and shall be punished by a fine of not less than $50 or more than $500 or by imprisonment in the county or city jail for not more than 6 months or by both such fine and imprisonment.

History: **En. Sec. 2, Ch. 100, L. 1967; R.C.M. 1947, 32-2143.2.**

61-8-718. Penalty for violation of conservation speed limit. (1) A person violating the speed limit imposed pursuant to 61-8-304 is guilty of the offense of unnecessary waste of a resource currently in short supply and upon conviction shall be fined $5, and no jail sentence may be imposed. Bond for this offense shall be $5.

(2) For the purpose of this section only, the fees of the justice's court shall be the balance of the fine not otherwise allocated by law and shall be remitted as set forth in 3-10-603(3).

History: **En. 32-2144.6 by Sec. 6, Ch. 60, L. 1974; amd. Sec. 1, Ch. 248, L. 1974; amd. Sec. 1, Ch. 6, L. 1975; R.C.M. 1947, 32-2144.6(1); amd. Sec. 71, Ch. 421, L. 1979.**

61-8-719. Penalty for leaving vehicle on public property. Any person or persons violating the provisions of 61-8-356 shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $25 or more than $300 or by imprisonment in the county jail for not less than 5 days or more than 90 days or by both fine and imprisonment.

History: **En. Sec. 9, Ch. 288, L. 1967; R.C.M. 1947, 53-909(part).**

61-8-720. Penalty. Any person who violates any of the provisions of 61-8-331(2) is guilty of a misdemeanor. Upon arrest and conviction therefor, he shall be punished by a fine of not less than $5 or more than $100 or by imprisonment in the city or county jail for not less than 5 days or more than 90 days or by both fine and imprisonment.

History: **En. Sec. 10-111, Ch. 197, L. 1965; R.C.M. 1947, 32-4311(2).**

61-8-721. Repealed. Sec. 99, Ch. 421, L. 1979.

History: **En. 75-7007 by Sec. 284, Ch. 5, L. 1971; R.C.M. 1947, 75-7007(part).**

CHAPTER 9

VEHICLE EQUIPMENT

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Part 1

General Provisions

61-9-101. Application — exceptions. (1) The provisions of this chapter relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways except where a different place is specifically referred to in a given section.

(2) The operation of motor vehicles directly across the public roads and highways of this state, especially as required in the transportation of natural resource products, including agricultural products and livestock, shall not be considered to be the operation of such vehicles on the public roads and highways of this state, provided that such crossings are adequately marked with such warning signs or devices and are subject to relating to stopping before entry, and to restoration of any damage, as may reasonably be prescribed by the state or local agency in control of safety of operation of the public highway involved.

History: (1)En. Sec. 22, Ch. 263, L. 1955; Sec. 32-2124, R.C.M. 1947; (2)En. Sec. 4, Ch. 247, L. 1959; Sec. 32-2124.1, R.C.M. 1947; R.C.M. 1947, 32-2124(part), 32-2124.1.

61-9-102. Uniformity of interpretation. This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. Sec. 155, Ch. 263, L. 1955; R.C.M. 1947, 32-21-158.

61-9-103. Provisions uniform throughout state — power of local authorities. The provisions of this chapter shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein and no local authority shall enact or enforce any ordinance, rule, or regulation in conflict with the provisions of this chapter unless expressly authorized herein. Local authorities may, however, adopt additional traffic regulations which are not in conflict with the provisions of this chapter.

History: En. Sec. 27, Ch. 263, L. 1955; amd. Sec. 1, Ch. 201, L. 1957; R.C.M. 1947, 32-2130.

61-9-104. Required obedience to traffic laws. It is unlawful and, unless otherwise declared in this chapter with respect to particular offenses, it is a misdemeanor for any person to do any act forbidden or fail to perform any act required in this chapter.

History: En. Sec. 23, Ch. 263, L. 1955; R.C.M. 1947, 32-2125.

61-9-105. Obedience to police officers and highway patrolmen. No person shall willfully fail or refuse to comply with any lawful order or direction of any police officer or highway patrolman pertaining to the use of the highways by traffic.

History: En. Sec. 24, Ch. 263, L. 1955; R.C.M. 1947, 32-2126.

61-9-106. Responsibility of public officers and employees. (1) The provisions of this chapter applicable to the drivers of vehicles upon the highways shall apply to the drivers of all vehicles owned or operated by the United States, this state, or any county, city, or town, district, or any other political subdivision of the state, except as provided in this section and subject to such specific exceptions as are set forth in this chapter with reference to authorized emergency vehicles.

(2) Unless specifically made applicable, the provisions of this chapter except those contained in part 5 of chapter 8 shall not apply to persons, teams, motor vehicles, and other equipment while actually engaged in work upon the surface of a highway but shall apply to such persons and vehicles when traveling to or from such work.

History: En. Sec. 25, Ch. 263, L. 1955; R.C.M. 1947, 32-2127.

61-9-107. Traffic laws applicable to persons driving animal-drawn vehicles. Every person driving an animal-drawn vehicle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this chapter, except those provisions of this chapter which by their very nature can have no application.

History: En. Sec. 26, Ch. 263, L. 1955; R.C.M. 1947, 32-2129.

61-9-108. Rights of owners of real property not affected — when. Nothing in this chapter shall be construed to prevent the owner of real property used by the public for purposes of vehicular travel by permission of the owner from prohibiting such use or from requiring other or different or additional conditions than those specified in this chapter, or otherwise regulating such use as may seem best to such owner.

History: **En. Sec. 29, Ch. 263, L. 1955; R.C.M. 1947, 32-2132.**

61-9-109. Driving vehicle in unsafe condition prohibited — applicability of chapter. (1) It is a misdemeanor for any person to drive or move or for the owner to cause or knowingly permit to be driven or moved on any highway any vehicle or combination of vehicles which is in such unsafe condition as to endanger any person, or which does not contain those parts or is not at all times equipped with such lamps and other equipment in proper condition and adjustment as required in this chapter or which is equipped in any manner in violation of this chapter, or for any person to do any act forbidden or fail to perform any act required under this chapter.

(2) Nothing contained in this chapter shall be construed to prohibit the use of additional parts and accessories on any vehicle not inconsistent with the provisions of this chapter.

(3) The provisions of this chapter with respect to equipment on vehicles shall not apply to implements of husbandry, road machinery, road rollers, or farm tractors except as herein made applicable.

History: **En. Sec. 111, Ch. 263, L. 1955; R.C.M. 1947, 32-21-114.**

Part 2

Lighting Equipment

61-9-201. When lighted lamps are required. Every vehicle upon a highway within this state at any time from one-half hour after sunset to one-half hour before sunrise and at any other time when due to insufficient light or unfavorable atmospheric conditions persons and vehicles on the highway are not clearly discernible at a distance of 500 feet ahead shall display lighted lamps and illuminating devices as hereinafter respectively required for different classes of vehicles, subject to exceptions with respect to parked vehicles.

History: **En. Sec. 112, Ch. 263, L. 1955; R.C.M. 1947, 32-21-115.**

61-9-202. Visibility distance and mounted height of lamps. (1) Whenever requirement is hereinafter declared as to the distance from which certain lamps and devices shall render objects visible or within which such lamps or devices shall be visible, said provisions shall apply during the times stated in 61-9-201 in respect to a vehicle without load when upon a straight, level, unlighted highway under normal atmospheric conditions unless a different time or condition is expressly stated.

(2) Whenever requirement is hereinafter declared as to the mounted height of lamps or devices it shall mean from the center of such lamp or device to the level ground upon which the vehicle stands when such vehicle is without a load.

History: **En. Sec. 113, Ch. 263, L. 1955; R.C.M. 1947, 32-21-116.**

61-9-203. Headlamps on motor vehicles. (1) Every motor vehicle other than a motorcycle or motor-driven cycle shall be equipped with at least two headlamps with at least one on each side of the front of the motor vehicle, which headlamps shall comply with the requirements and limitations set forth in this chapter.

(2) Every motorcycle and every motor-driven cycle shall be equipped with at least one and not more than two headlamps which shall comply with the requirements and limitations of this chapter.

(3) Every headlamp upon every motor vehicle, including every motorcycle and every motor-driven cycle, shall be located at a height measured from the center of the headlamp of not more than 54 inches or less than 24 inches to be measured as set forth in 61-9-202(2).

History: **En. Sec. 114, Ch. 263, L. 1955; amd. Sec. 1, Ch. 103, L. 1957; R.C.M. 1947, 32-21-117.**

61-9-204. Taillamps. (1) Every motor vehicle, trailer, semitrailer, and pole trailer and any other vehicle which is being drawn at the end of a train of vehicles shall be equipped with at least one taillamp mounted on the rear, which, when lighted as hereinbefore required, shall emit a red light plainly visible from a distance of 500 feet to the rear, provided that in the case of a train of vehicles only the taillamp on the rearmost vehicle need actually be seen from the distance specified. Further, every such above-mentioned vehicle, other than a truck tractor, registered in this state and manufactured or assembled after January 1, 1956, shall be equipped with at least two taillamps mounted on the rear, which when lighted as herein required, shall comply with the provisions of this section.

(2) Every taillamp upon every vehicle shall be located at a height of not more than 72 inches or less than 15 inches.

(3) Either taillamp or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible from a distance of 50 feet to the rear. Any taillamp or taillamps, together with any separate lamp for illuminating the rear registration plate, shall be so wired as to be lighted whenever the headlamps or auxiliary driving lamps are lighted.

History: **En. Sec. 115, Ch. 263, L. 1955; R.C.M. 1947, 32-21-118; amd. Sec. 1, Ch. 42, L. 1979.**

61-9-205. New motor vehicles to be equipped with reflectors. (1) Every new motor vehicle hereafter sold and operated upon a highway, other than a truck tractor, shall carry on the rear, either as a part of the taillamps or separately, two red reflectors, except that every motorcycle and motor-driven cycle shall carry at least one reflector meeting the requirements of this section, and except that vehicles of the type mentioned in 61-9-208 shall be equipped with reflectors as required in those sections applicable thereto.

(2) Every such reflector shall be mounted on the vehicle at a height not less than 15 inches or more than 60 inches measured as set forth in 61-9-202(2) and shall be of such size and characteristics and so mounted as to be visible at night from all distances within 300 feet to 50 feet from such vehicle when directly in front of lawful upper beams of headlamps, except that visibility from a greater distance may be required of reflectors on certain types of vehicles.

History: **En. Sec. 116, Ch. 263, L. 1955; R.C.M. 1947, 32-21-119; amd. Sec. 2, Ch. 42, L. 1979.**

61-9-206. Stop lamps — when required. From and after January 1, 1956, it shall be unlawful for any person to sell any new motor vehicle, including any motorcycle or motor-driven cycle, in this state or for any person to drive such vehicle on the highways unless it is equipped with at least one stop lamp meeting the requirements of 61-9-218.

History: En. Sec. 117, Ch. 263, L. 1955; R.C.M. 1947, 32-21-120.

61-9-207. Application of succeeding sections. Those sections of this chapter which follow immediately, including 61-9-208 through 61-9-211 and 61-9-213 relating to clearance and marker lamps, reflectors, and stoplights shall apply as stated in said sections to vehicles of the type therein enumerated, namely passenger buses, trucks, truck tractors, and certain trailers, semitrailers, and pole trailers, respectively, when operated upon any highway. Said vehicles shall be equipped as required and all lamp equipment required shall be lighted at all times mentioned in 61-9-201 except that clearance and side marker lamps need not be lighted on any said vehicle when operated within any municipality where there is sufficient light to render clearly discernible persons and vehicles on the highway at a distance of 500 feet.

History: En. Sec. 118, Ch. 263, L. 1955; R.C.M. 1947, 32-21-121.

61-9-208. Additional equipment required on certain vehicles. In addition to other equipment required in this chapter, the following vehicles shall be equipped as herein stated under the conditions stated in 61-9-207:

(1) On every bus or truck, whatever its size, there shall be on the rear, two reflectors, one at each side, and one stoplight.

(2) On every bus or truck 80 inches or more in overall width, in addition to the requirements in subsection (1):

(a) on the front, two clearance lamps, one at each side;

(b) on the rear, two clearance lamps, one at each side;

(c) on each side, two side marker lamps, one at or near the front and one at or near the rear;

(d) on each side, two reflectors, one at or near the front and one at or near the rear.

(3) On every truck tractor:

(a) on the front, two clearance lamps, one at each side;

(b) on the rear, one stoplight.

(4) On every trailer or semitrailer having a gross weight in excess of 3,000 pounds:

(a) on the front, two clearance lamps, one at each side;

(b) on each side, two side marker lamps, one at or near the front and one at or near the rear;

(c) on each side, two reflectors, one at or near the front and one at or near the rear;

(d) on the rear, two clearance lamps, one at each side, also two reflectors, one at each side, and one stoplight.

(5) On every pole trailer in excess of 3,000 pounds gross weight:

(a) on each side, one side marker lamp and one clearance lamp which may be in combination, to show to the front, side, and rear;

(b) on the rear of the pole trailer or load, two reflectors, one at each side.

(6) On every trailer, semitrailer, or pole trailer weighing 3,000 pounds gross or less:

(a) on the front, a steel chain or cable which shall be securely fastened to the towing unit with the minimum diameter of any portion of such chains or cables being one-fourth inch;

(b) on the rear, two reflectors, one on each side. If any trailer or semitrailer is so loaded or is of such dimensions as to obscure the stoplight on the towing vehicle, then such vehicle shall also be equipped with one stoplight.

History: En. Sec. 119, Ch. 263, L. 1955; amd. Sec. 1, Ch. 233, L. 1959; amd. Sec. 1, Ch. 182, L. 1974; R.C.M. 1947, 32-21-122(part).

61-9-209. Color of clearance lamps, side marker lamps, reflectors, and back-up lamps. (1) Front clearance lamps and those marker lamps and reflectors mounted on the front or on the side near the front of a vehicle shall display or reflect an amber color.

(2) Rear clearance lamps and those marker lamps and reflectors mounted on the rear or on the sides near the rear of a vehicle shall display or reflect a red color.

(3) All lighting devices and reflectors mounted on the rear of any vehicle shall display or reflect a red color, except the stoplight or other signal device, which may be red, amber, or yellow, and except that the light illuminating the license plate shall be white and the light emitted by a back-up lamp may be white, amber, or red.

History: En. Sec. 120, Ch. 263, L. 1955; R.C.M. 1947, 32-21-123.

61-9-210. Mounting of reflectors, clearance lamps, and side marker lamps. (1) Reflectors when required by 61-9-208 shall be mounted at a height not less than 24 inches and not higher than 60 inches above the ground on which the vehicle stands, except that if the highest part of the permanent structure of the vehicle is less than 24 inches the reflector at such point shall be mounted as high as that part of the permanent structure will permit.

(2) The rear reflectors on a pole trailer may be mounted on each side of the bolster or load.

(3) Any required red reflector on the rear of a vehicle may be incorporated with the taillamp, but such reflector shall meet all the other reflector requirements of this chapter.

(4) Clearance lamps shall be mounted on the permanent structure of the vehicle in such a manner as to indicate its extreme width and as near the top thereof as practicable. Clearance lamps and side marker lamps may be mounted in combination provided illumination is given as required herein with reference to both.

History: En. Sec. 121, Ch. 263, L. 1955; R.C.M. 1947, 32-21-124.

61-9-211. Visibility of reflectors, clearance lamps, and marker lamps. (1) Every reflector upon any vehicle referred to in 61-9-208 shall be of such size and characteristics and so maintained as to be readily visible at nighttime from all distances within 600 feet to 100 feet from the vehicle when directly in front of lawful upper beams of headlamps. Reflectors required to be mounted on the sides of the vehicle shall reflect the required color of light to the sides, and those mounted on the rear shall reflect a red color to the rear.

(2) Front and rear clearance lamps shall be capable of being seen and distinguished under normal atmospheric conditions, at the times lights are required, at a distance of 500 feet from the front and rear respectively of the vehicle.

(3) Side marker lamps shall be capable of being seen and distinguished under normal atmospheric conditions, at the times lights are required, at a distance of 500 feet from the side of the vehicle on which mounted.

History: **En. Sec. 122, Ch. 263, L. 1955; R.C.M. 1947, 32-21-125.**

61-9-212. Obstructed lights not required. Whenever motor and other vehicles are operated in combination during the time that lights are required, any lamp (except taillamps) need not be lighted which, by reason of its location on a vehicle of the combination, would be obscured by another vehicle of the combination, but this shall not affect the requirements that lighted clearance lamps be displayed on the front of the foremost vehicle required to have clearance lamps or that all lights required on the rear of the rearmost vehicle of any combination shall be lighted.

History: **En. Sec. 123, Ch. 263, L. 1955; R.C.M. 1947, 32-21-126.**

61-9-213. Lamp or flag on projecting load. Whenever the load upon any vehicle extends to the rear 4 feet or more beyond the bed or body of such vehicle, there shall be displayed at the extreme rear end of the load, at the times specified in 61-9-201, a red light or lantern plainly visible from a distance of at least 500 feet to the sides and rear. The red light or lantern required under this section shall be in addition to the red light required upon every vehicle. At any other time there shall be displayed at the extreme rear end of such load a red flag or cloth not less than 12 inches square and so hung that the entire area is visible to the driver of a vehicle approaching from the rear.

History: **En. Sec. 124, Ch. 263, L. 1955; R.C.M. 1947, 32-21-127.**

61-9-214. Lamps on parked vehicles. (1) Whenever a vehicle is lawfully parked upon a street or highway during the hours between one-half hour after sunset and one-half hour before sunrise and in the event there is sufficient light to reveal any person or object within a distance of 500 feet upon such street or highway no lights need be displayed upon such parked vehicle.

(2) Whenever a vehicle is parked or stopped upon a roadway or shoulder adjacent thereto, whether attended or unattended, during the hours between one-half hour after sunset and one-half hour before sunrise and there is not sufficient light to reveal any person or object within a distance of 500 feet upon such highway, such vehicle so parked or stopped shall be equipped with one or more lamps meeting the following requirements: at least one lamp shall display a white or amber light visible from a distance of 500 feet to the front of the vehicle, and the same lamp or at least one other lamp shall display a red light visible from a distance of 500 feet to the rear of the vehicle, and the location of said lamp or lamps, shall always be such that at least one lamp or combination of lamps meeting the requirements of this section is

installed as near as practicable to the side of the vehicle which is closest to passing traffic. The foregoing provisions shall not apply to a motor-driven cycle.

(3) Any lighted headlamp upon a parked vehicle shall be depressed or dimmed.

History: **En. Sec. 125, Ch. 263, L. 1955; R.C.M. 1947, 32-21-128.**

61-9-215. Lamps on farm tractors, farm equipment, and implements of husbandry. (1) Every farm tractor and every self-propelled farm equipment unit or implement of husbandry not equipped with an electric lighting system shall at all times mentioned in 61-9-201 be equipped with at least one lamp displaying a white light visible from a distance of not less than 500 feet to the front of such vehicle and shall also be equipped with at least one lamp displaying a red light visible from a distance of not less than 500 feet to the rear of such vehicle and two red reflectors visible from a distance of 100 to 600 feet to the rear when illuminated by the upper beams of headlamps. The lights required herein shall be positioned so that one lamp showing to the front and one lamp or reflector showing to the rear will indicate the furthest projection of said tractor, unit, or implement on the side of the road used in passing such vehicle.

(2) Every combination of farm tractor and towed unit of farm equipment or implement of husbandry not equipped with an electric lighting system shall at all times mentioned in 61-9-201 be equipped with the following lamps:

(a) at least one lamp mounted to indicate as nearly as practicable the extreme left projection of said combination and displaying a white light visible from a distance of not less than 500 feet to the front of said combination; and

(b) two lamps each displaying a red light visible from a distance of not less than 500 feet to the rear of said combination, or as an alternative, at least one lamp displaying a red light visible from a distance of not less than 500 feet to the rear thereof and two red reflectors visible from a distance of 100 to 600 feet to the rear thereof when illuminated by the upper beams of headlamps, which said lamps or reflectors shall be mounted in such manner as to indicate as nearly as practicable the extreme left and right rear projections of said towed unit or implement on the highway.

(3) Every farm tractor and every self-propelled unit of farm equipment or implement of husbandry equipped with an electric lighting system shall at all times mentioned in 61-9-201 be equipped with two single-beam or multiple-beam headlamps meeting the requirements of 61-9-222 or 61-9-220 respectively, or as an alternative, 61-9-224, and two red lamps visible from a distance of not less than 500 feet to the rear, or in the alternative, one red lamp visible from a distance of not less than 500 feet to the rear and two red reflectors visible from a distance of 100 to 600 feet to the rear when illuminated by the upper beams of headlamps. Such red lamps or reflectors shall be mounted in the rear of said farm tractor or self-propelled implement of husbandry so as to indicate as nearly as practicable the extreme left and right projections of said vehicle on the highway.

(4) Every combination of farm tractor and towed farm equipment or towed implement of husbandry equipped with an electric lighting system

shall at all times mentioned in 61-9-201 be equipped with the following lamps:

(a) The farm tractor element of every such combination shall be equipped with two single-beam or multiple-beam headlamps meeting the requirements of 61-9-220, 61-9-222, or 61-9-224.

(b) The towed unit of farm equipment or implement of husbandry element of such combination shall be equipped with two red lamps visible from a distance of not less than 500 feet to the rear, or as an alternative, one red lamp visible from a distance of not less than 500 feet to the rear and two red reflectors visible from a distance of 100 to 600 feet to the rear when illuminated by the upper beams of headlamps; and such red lamps or reflectors shall be located so as to indicate as nearly as practicable the extreme left and right projections of said towed unit or implement on the highway.

(c) Said combination shall also be equipped with a lamp displaying a white or amber light, or any shade of color between white and amber, visible from a distance of not less than 500 feet to the front and a lamp displaying a red light visible from a distance of not less than 500 feet to the rear, which said lamp or lamps shall be installed or capable of being positioned so as to indicate to the front and rear the furthest projection of said combination on the side of the road used by other vehicles in passing such combination.

History: En. Sec. 126, Ch. 263, L. 1955; R.C.M. 1947, 32-21-129.

61-9-216. Lamps on other vehicles and equipment. Every vehicle, including animal-drawn vehicles and vehicles referred to in 61-9-109(3), not specifically required by the provisions of this chapter to be equipped with lamps or other lighting devices, shall at all times specified in 61-9-201 be equipped with at least one lamp displaying a white light visible from a distance of not less than 500 feet to the front of said vehicle, and shall also be equipped with two lamps displaying red light visible from a distance of not less than 500 feet to the rear of said vehicle, or as an alternative, one lamp displaying a red light visible from a distance of not less than 500 feet to the rear and two red reflectors visible for distances of 100 to 600 feet to the rear when illuminated by the upper beams of headlamps.

History: En. Sec. 127, Ch. 263, L. 1955; amd. Sec. 1, Ch. 247, L. 1969; R.C.M. 1947, 32-21-130(a).

61-9-217. Spot lamps and auxiliary lamps. (1) Any motor vehicle may be equipped with not to exceed two spot lamps and every lighted spot lamp shall be turned off upon approaching another moving vehicle from either direction.

(2) Any motor vehicle may be equipped with not to exceed two fog lamps mounted on the front at a height not less than 12 inches or more than 30 inches above the level surface upon which the vehicle stands and so aimed that when the vehicle is not loaded none of the high-intensity portion of the light to the left of the center of the vehicle shall at a distance of 25 feet ahead project higher than a level of 4 inches below the level of the center of the lamp from which it comes. Lighted fog lamps meeting the above requirements may be used with lower headlamp beams as specified in 61-9-220(2).

(3) Any motor vehicle may be equipped with not to exceed two auxiliary passing lamps mounted on the front at a height not less than 24 inches or

more than 42 inches above the level surface upon which the vehicle stands. The provisions of 61-9-220 shall apply to any combination of headlamps and auxiliary passing lamps.

(4) Any motor vehicle may be equipped with not to exceed two auxiliary driving lamps mounted on the front at a height not less than 16 inches or more than 42 inches above the level surface upon which the vehicle stands. The provisions of 61-9-220 shall apply to any combination of headlamps and auxiliary driving lamps.

History: En. Sec. 128, Ch. 263, L. 1955; amd. Sec. 1, Ch. 147, L. 1957; R.C.M. 1947, 32-21-131.

61-9-218. Signal lamps and signal devices. (1) Any motor vehicle may be equipped and when required under this chapter shall be equipped with a stop lamp or lamps on the rear of the vehicle which shall display a red or amber light, or any shade of color between red and amber, visible from a distance of not less than 100 feet to the rear in normal sunlight, and which shall be actuated upon application of the service (foot) brake, and which may but need not be incorporated with one or more other rear lamps.

(2) Any motor vehicle may be equipped and when required under this chapter shall be equipped with lamps showing to the front and rear for the purpose of indicating an intention to turn either to the right or left. When lamps are used for such purposes, the lamps showing to the front shall be located on the same level and as widely spaced laterally as practicable and when in use shall display a white or amber light, or any shade of color between white and amber, visible from a distance of not less than 100 feet to the front in normal sunlight, and the lamps showing to the rear shall be located at the same level and as widely spaced laterally as practicable and when in use shall display a red or amber light, or any shade of color between red and amber, visible from a distance of not less than 100 feet to the rear in normal sunlight. When actuated such lamps shall indicate the intended direction of turning by flashing the lights showing to the front and rear on the side toward which the turn is made.

(3) No stop lamp or signal lamp or device shall project a glaring light.

History: En. Sec. 130, Ch. 263, L. 1955; amd. Sec. 2, Ch. 105, L. 1957; R.C.M. 1947, 32-21-133.

61-9-219. Additional lighting equipment. (1) Any motor vehicle may be equipped with not more than two side cowl or fender lamps which shall emit an amber or white light without glare.

(2) Any motor vehicle may be equipped with not more than one running board courtesy lamp on each side thereof which shall emit a white or amber light without glare.

(3) Any motor vehicle may be equipped with not more than two back-up lamps either separately or in combination with other lamps, but any such back-up lamps shall not be lighted when the motor vehicle is in forward motion.

(4) Any vehicle may be equipped with lamps which may be used for the purpose of warning the operators of other vehicles of the presence of a vehicular traffic hazard requiring the exercise of unusual care in approaching, overtaking, or passing, and when so equipped may display such warning in addition to any other warning signals required by this chapter. The lamps used to display such warning to the front shall be mounted at the same level

and as widely spaced laterally as practicable and shall display simultaneously flashing white or amber lights, or any shade of color between white and amber. The lamps used to display such warning to the rear shall be mounted at the same level and as widely spaced laterally as practicable, and shall show simultaneously flashing amber or red lights, or any shade of color between amber and red. These warning lights shall be visible from a distance of not less than 500 feet under normal atmospheric conditions at night.

History: **En. Sec. 131, Ch. 263, L. 1955; R.C.M. 1947, 32-21-134.**

61-9-220. Multiple-beam road-lighting equipment. Except as hereinafter provided, the headlamps or the auxiliary driving lamp or the auxiliary passing lamp or combination thereof on motor vehicles other than motorcycles or motor-driven cycles shall be so arranged that the driver may select at will between distributions of light projected to different elevations and such lamps may, in addition, be so arranged that such selection can be made automatically, subject to the following limitations:

(1) There shall be an uppermost distribution of light, or composite beam, so aimed and of such intensity as to reveal persons and vehicles at a distance of at least 350 feet ahead for all conditions of loading.

(2) There shall be a lowermost distribution of light, or composite beam, so aimed and of sufficient intensity to reveal persons and vehicles at a distance of at least 100 feet ahead; and on a straight level road under any condition of loading none of the high-intensity portion of the beam shall be directed to strike the eyes of an approaching driver.

(3) Every new motor vehicle, other than a motorcycle or motor-driven cycle, registered in this state after January 1, 1956, which has multiple-beam road-lighting equipment shall be equipped with a beam indicator, which shall be lighted whenever the uppermost distribution of light from the headlamps is in use, and shall not otherwise be lighted. Said indicator shall be so designed and located that when lighted it will be readily visible without glare to the driver of the vehicle so equipped.

History: **En. Sec. 132, Ch. 263, L. 1955; R.C.M. 1947, 32-21-135.**

61-9-221. Use of multiple-beam road-lighting equipment. Whenever a motor vehicle is being operated on a roadway or shoulder adjacent thereto during the times specified in 61-9-201, the driver shall use a distribution of light, or composite beam, directed high enough and of sufficient intensity to reveal persons and vehicles at a safe distance in advance of the vehicle, subject to the following requirements and limitations:

(1) Whenever the driver of a vehicle approaches an oncoming vehicle within 1,000 feet, such driver shall use a distribution of light or composite beam so aimed that the glaring rays are not projected into the eyes of the oncoming driver. The lowermost distribution of light specified in 61-9-220(2) shall be deemed to avoid glare at all times, regardless of road contour and loading.

(2) Whenever the driver of a vehicle follows another vehicle within 300 feet to the rear, such driver shall use a distribution of light permissible under this chapter other than the uppermost distribution of light specified in subsection (1) of 61-9-220.

History: **En. Sec. 133, Ch. 263, L. 1955; R.C.M. 1947, 32-21-136.**

61-9-222. Single-beam road-lighting equipment. Headlamps arranged to provide a single distribution of light shall be permitted on motor vehicles manufactured and sold prior to July 1, 1956, in lieu of multiple-beam road-lighting equipment herein specified if the single distribution of light complies with the following requirements and limitations:

(1) The headlamps shall be so aimed that when the vehicle is not loaded none of the high-intensity portion of the light shall at a distance of 25 feet ahead project higher than a level of 5 inches below the level of the center of the lamp from which it comes, and in no case higher than 42 inches above the level on which the vehicle stands at a distance of 75 feet ahead.

(2) The intensity shall be sufficient to reveal persons and vehicles at a distance of at least 200 feet.

History: **En. Sec. 134, Ch. 263, L. 1955; R.C.M. 1947, 32-21-137.**

61-9-223. Lighting equipment on motor-driven cycles. The headlamp or headlamps upon every motor-driven cycle may be of the single-beam or multiple-beam type but in either event shall comply with the requirements and limitations as follows:

(1) Every said headlamp or headlamps on a motor-driven cycle shall be of sufficient intensity to reveal a person or a vehicle at a distance of not less than 100 feet when the motor-driven cycle is operated at any speed less than 25 miles per hour and at a distance of not less than 200 feet when the motor-driven cycle is operated at a speed of 25 or more miles per hour, and at a distance of not less than 300 feet when the motor-driven cycle is operated at a speed of 35 or more miles per hour.

(2) In the event the motor-driven cycle is equipped with a multiple-beam headlamp or headlamps the upper beam shall meet the minimum requirements set forth above and shall not exceed the limitations set forth in 61-9-220(1) and the lowermost beam shall meet the requirements applicable to a lowermost distribution of light as set forth in 61-9-220(2).

(3) In the event the motor-driven cycle is equipped with a single-beam lamp or lamps, said lamp or lamps shall be so aimed that when the vehicle is loaded none of the high-intensity portion of light at a distance of 25 feet ahead shall project higher than the level of the center of the lamp from which it comes.

History: **En. Sec. 135, Ch. 263, L. 1955; R.C.M. 1947, 32-21-138.**

61-9-224. Alternate road-lighting equipment. Any motor vehicle may be operated under the conditions specified in 61-9-201 when equipped with two lighted lamps upon the front thereof capable of revealing persons and objects 75 feet ahead in lieu of lamps required in 61-9-220 or 61-9-222 provided, however, that at no time shall it be operated at a speed in excess of 20 miles per hour.

History: **En. Sec. 136, Ch. 263, L. 1955; R.C.M. 1947, 32-21-139.**

61-9-225. Number of driving lamps required or permitted. (1) At all times specified in 61-9-201, at least two lighted lamps shall be displayed, one on each side at the front of every motor vehicle other than a motorcycle or motor-driven cycle, except when such vehicle is parked, subject to the regulations governing lights on parked vehicles.

(2) Whenever a motor vehicle equipped with headlamps as herein required is also equipped with any auxiliary lamps or a spot lamp or any other lamp on the front thereof projecting a beam of intensity greater than 300 candlepower, not more than a total of four of any such lamps on the front of a vehicle shall be lighted at any one time when upon a highway.

History: **En. Sec. 137, Ch. 263, L. 1955; R.C.M. 1947, 32-21-140.**

61-9-226. Special restrictions on lamps. (1) Any lighted lamp or illuminating device upon a motor vehicle other than headlamps, spot lamps, auxiliary lamps, or flashing turn signals, emergency vehicle warning lamps, and school bus warning lamps, which projects a beam of light of an intensity greater than 300 candlepower shall be so directed that no part of the high intensity portion of the beam will strike the level of the roadway on which the vehicle stands at a distance of more than 75 feet from the vehicle.

(2) No person shall drive or move any vehicle or equipment upon a highway with any lamp or device thereon displaying a red light visible from directly in front of the center thereof. This section shall not apply to any vehicle upon which a red light visible from the front is expressly authorized or required by this code.

(3) Flashing lights are prohibited except on an authorized emergency vehicle, school bus, snow-removal equipment, or on any vehicle as a means for indicating a right or left turn, or the presence of a vehicular traffic hazard requiring unusual care in approaching, overtaking, or passing.

History: **En. Sec. 138, Ch. 263, L. 1955; R.C.M. 1947, 32-21-141.**

61-9-227. Blinker-type or revolving red light on certain private vehicles — use — identification card. (1) Firefighters, when authorized by the chief of their respective department, and search and rescue and volunteer emergency medical personnel, when authorized by the county sheriff, may use a blinker-type or revolving red light on the front or the top of their privately owned motor vehicles. This light shall be used on emergency duty only.

(2) Any firefighter or search and rescue or volunteer emergency medical personnel displaying the emergency red light on a privately owned motor vehicle shall also carry attached to a convenient location on the vehicle to which the red light is attached an identification card showing the name of the owner of said vehicle, the organization to which he belongs, and bearing the signature of the person authorizing the emergency use of said light.

History: **En. Sec. 1, Ch. 154, L. 1957; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 32-21-141.1; amd. Sec. 1, Ch. 369, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted language in (1) for "Firefighters, when authorized by the chief of their respective department, shall be permitted to use a blinker-type red light on the front of their privately owned motor vehicles with the word "FIRE" inscribed on the lens, which lens shall not exceed 5 ½ inches in diameter. This light shall be used on emergency duty only."; inserted "or search and rescue or volunteer emergency medical personnel" after "Any firefighter" at the beginning of (2); substituted "person" for "chief of his department" before "authorizing" near the end of (2).

61-9-228. Standards for lights on snow-removal equipment. (1) The commission shall adopt standards and specifications applicable to headlamps, clearance lamps, and identification and other lamps on snow-removal equipment when operated on the highways of this state in lieu of the lamps otherwise required on motor vehicles by this chapter. Such standards and specifications may permit the use of flashing lights for purposes of identification on snow-removal equipment when in service upon the highways. The standards and specifications for lamps referred to in this section shall correlate with and so far as possible conform with those approved by the American association of state highway officials.

(2) It shall be unlawful to operate any snow-removal equipment on any highway unless the lamps thereon comply with and are lighted when and as required by the standards and specifications adopted as provided in this section.

History: **En. Sec. 139, Ch. 263, L. 1955; R.C.M. 1947, 32-21-142.**

Part 3

Brakes

61-9-301. Brake equipment required. Every motor vehicle, trailer, semitrailer, and pole trailer, and any combination of such vehicles operating upon a highway within this state shall be equipped with brakes in compliance with the requirements of this part.

History: **En. Sec. 1, Ch. 139, L. 1965; R.C.M. 1947, 32-21-143.1(part).**

61-9-302. Service brakes — adequacy. Every such vehicle and combination of vehicles, except special mobile equipment as defined in 61-1-104, shall be equipped with service brakes complying with the performance requirements of 61-9-312 and adequate to control the movement of and to stop and hold such vehicle under all conditions of loading and on any grade incident to its operation.

History: **En. Sec. 1, Ch. 139, L. 1965; R.C.M. 1947, 32-21-143.1(a).**

61-9-303. Parking brakes — adequacy. Every such vehicle and combination of vehicles, except motorcycles and motor-driven cycles, shall be equipped with parking brakes adequate to hold the vehicle on any grade on which it is operated, under all conditions of loading, on a surface free from snow, ice, or loose material. The parking brakes shall be capable of being applied in conformance with the foregoing requirements by the driver's muscular effort or by spring action or by equivalent means. Their operation may be assisted by the service brakes or other source of power provided that failure of the service brake actuation system or other power assisting mechanism will not prevent the parking brakes from being applied in conformance with the foregoing requirements. The parking brakes shall be so designed that when once applied they shall remain applied with the required effectiveness despite exhaustion of any source of energy or leakage of any kind. The same brake drums, brake shoes and lining assemblies, brake shoe anchors and mechanical brake shoe actuation mechanism normally associated with the wheel brake assemblies may be used for both the service brakes and the parking brakes. If the means of applying the parking brakes and the service brakes are connected in any way, they shall be so constructed that failure of any one part shall not leave the vehicle without operative brakes.

History: **En. Sec. 1, Ch. 139, L. 1965; R.C.M. 1947, 32-21-143.1(b).**

61-9-304. Brakes required on all wheels — exceptions. Every vehicle shall be equipped with brakes acting on all wheels except:

(1) trailers, semitrailers, pole trailers of a gross weight not exceeding 3,000 pounds, provided that:

(a) the total weight on and including the wheels of the trailer or trailers shall not exceed 40% of the gross weight of the towing vehicle when connected to the trailer or trailers; and

(b) the combination of vehicles consisting of the towing vehicle and its total towed load is capable of complying with the performance requirements of 61-9-312;

(2) any vehicle being towed in driveaway or towaway operations, provided the combination of vehicles is capable of complying with the performance requirements of 61-9-312;

(3) trucks and truck tractors having three or more axles need not have brakes on the front wheels, except that when such vehicles are equipped with at least two steerable axles, the wheels of one steerable axle need not have brakes. However, such trucks and truck tractors must be capable of complying with the performance requirements of 61-9-312.

(4) special mobile equipment as defined in 61-1-104;

(5) the wheel of a sidecar attached to a motorcycle or to a motor-driven cycle, or the front wheel of a motor-driven cycle need not be equipped with brakes, provided that such motorcycle or motor-driven cycle is capable of complying with the performance requirements of 61-9-312.

History: **En. Sec. 1, Ch. 139, L. 1965; R.C.M. 1947, 32-21-143.1(c).**

61-9-305. Automatic trailer brake application upon breakaway. Every trailer, semitrailer, and pole trailer equipped with air or vacuum actuated brakes and every trailer, semitrailer, and pole trailer with a gross weight in excess of 3,000 pounds, manufactured or assembled after January 1, 1966, shall be equipped with brakes acting on all wheels and of such character as to be applied automatically and promptly, and remain applied for at least 15 minutes upon breakaway from the towing vehicle.

History: **En. Sec. 1, Ch. 139, L. 1965; R.C.M. 1947, 32-21-143.1(d).**

61-9-306. Tractor brakes protected. Every motor vehicle manufactured or assembled after January 1, 1966, and used to tow a trailer, semitrailer, or pole trailer equipped with brakes shall be equipped with means for providing that in case of breakaway of the towed vehicle, the towing vehicle will be capable of being stopped by the use of its service brakes.

History: **En. Sec. 1, Ch. 139, L. 1965; R.C.M. 1947, 32-21-143.1(e).**

61-9-307. Trailer air reservoirs safeguarded. Air brake systems installed on trailers manufactured or assembled after January 1, 1966, shall be so designed that the supply reservoir used to provide air for the brakes shall be safeguarded against backflow of air from the reservoir through the supply line.

History: **En. Sec. 1, Ch. 139, L. 1965; R.C.M. 1947, 32-21-143.1(f).**

61-9-308. Two means of emergency brake operation. (1) After January 1, 1966, every towing vehicle, when used to tow another vehicle equipped with air controlled brakes, in other than driveaway or towaway operations, shall be equipped with two means for emergency application of the trailer brakes. One of these means shall apply the brakes automatically in the event of a reduction of the towing vehicle air supply to a fixed pressure which shall be not lower than 20 pounds per square inch or higher than 45 pounds per square inch. The other means shall be a manually controlled device for applying and releasing the brakes, readily operable by a person seated in the driving seat, and its emergency position or method of operation shall be clearly indicated. In no instance may the manual means be so arranged as to permit its use to prevent operation of the automatic means. The automatic and the manual means required by this section may be, but are not required to be, separate.

(2) After January 1, 1966, every towing vehicle used to tow other vehicles equipped with vacuum brakes, in operations other than driveaway or towaway operations, shall have, in addition to the single control device required by 61-9-309, a second control device which can be used to operate the brakes on towed vehicles in emergencies. The second control shall be independent of brake air, hydraulic, and other pressure, and independent of other controls, unless the braking system be so arranged that failure of the pressure upon which the second control depends will cause the towed vehicle brakes to be applied automatically. The second control is not required to provide modulated braking.

History: **En. Sec. 1, Ch. 139, L. 1965; R.C.M. 1947, 32-21-143.1(g).**

61-9-309. Single control to operate all brakes. After January 1, 1966, every motor vehicle, trailer, semitrailer, and pole trailer, and every combination of such vehicles, except motorcycles and motor-driven cycles, equipped with brakes shall have the braking system so arranged that one control device can be used to operate all service brakes. This requirement does not prohibit vehicles from being equipped with an additional control device to be used to operate brakes on the towed vehicles. This regulation does not apply to driveaway or towaway operations unless the brakes on the individual vehicles are designed to be operated by a single control on the towing vehicle.

History: **En. Sec. 1, Ch. 139, L. 1965; R.C.M. 1947, 32-21-143.1(h).**

61-9-310. Reservoir capacity and check valve. (1) Every bus, truck, or truck tractor with air operated brakes shall be equipped with at least one reservoir sufficient to insure that, when fully charged to the maximum pressure as regulated by the air compressor governor cutout setting, a full service brake application may be made without lowering such reservoir pressure by more than 20%. Each reservoir shall be provided with means for readily draining accumulated oil or water.

(2) After January 1, 1966, every truck with three or more axles equipped with vacuum assistor type brakes and every truck tractor and truck used for towing a vehicle equipped with vacuum brakes shall be equipped with a reserve capacity or a vacuum reservoir sufficient to insure that, with the reserve capacity or reservoir fully charged and with the engine stopped, a full service brake application may be made without depleting the vacuum supply by more than 40%.

(3) All motor vehicles, trailers, semitrailers, and pole trailers, when equipped with air or vacuum reservoirs or reserve capacity as required by this

section, shall have such reservoirs or reserve capacity so safeguarded by a check valve or equivalent device that, in the event of failure or leakage in its connection to the source of compressed air or vacuum, the stored air or vacuum shall not be depleted by the leak or failure.

History: En. Sec. 1, Ch. 139, L. 1965; R.C.M. 1947, 32-21-143.1(i).

61-9-311. Warning devices. (1) Every bus, truck, or truck tractor using compressed air for the operation of its own brakes or the brakes on any towed vehicle shall be provided with a warning signal, other than a pressure gauge, readily audible or visible to the driver, which will operate at any time the air reservoir pressure of the vehicle is below 50% of the air compressor governor cutout pressure. In addition, each such vehicle shall be equipped with a pressure gauge visible to the driver, which indicates in pounds per square inch the pressure available for braking.

(2) After January 1, 1966, every truck tractor and truck used for towing a vehicle equipped with vacuum operated brakes and every truck with three or more axles using vacuum in the operation of its brakes, except those in driveaway or towaway operations, shall be equipped with a warning signal, other than a gauge indicating vacuum, readily audible or visible to the driver, which will operate at any time the vacuum in the vehicle's supply reservoir or reserve capacity is less than 8 inches of mercury.

(3) When a vehicle required to be equipped with a warning device is equipped with both air and vacuum power for the operation of its own brakes or the brakes on a towed vehicle, the warning devices may be, but are not required to be, combined into a single device which will serve both purposes. A gauge or gauges indicating pressure or vacuum shall not be deemed to be an adequate means of satisfying this requirement.

History: En. Sec. 1, Ch. 139, L. 1965; R.C.M. 1947, 32-21-143.1(j).

61-9-312. Performance ability of brakes. (1) Every motor vehicle and combination of vehicles, at all times and under all conditions of loading, upon application of the service brake, shall be capable of:

(a) developing a braking force that is not less than the percentage of its gross weight tabulated in subsection (3) for its classification;

(b) decelerating to a stop from not more than 20 miles per hour at not less than the feet per second per second tabulated in subsection (3) for its classification; and

(c) stopping from a speed of 20 miles per hour in not more than the distance tabulated in subsection (3) for its classification, such distance to be measured from the point at which movement of the service brake pedal or control begins.

(2) Tests for deceleration and stopping distance shall be made on a substantially level (not to exceed plus or minus 1% grade), dry, smooth, hard surface that is free from loose material.

(3)

Classification of Vehicles	Braking force as a percentage of gross vehicle or combination weight	Deceleration in feet per second per second	Brake system application and braking distance in feet from an initial speed of twenty (20) miles per hour
A Passenger vehicles with a seating capacity of ten (10) people or less including driver, not having a manufacturer's gross vehicle weight rating	52.8%	17	25
B-1 All motorcycles and motor-driven cycles	43.5%	14	30
B-2 Single unit vehicles with a manufacturer's gross vehicle weight rating of ten thousand (10,000) pounds or less	43.5%	14	30
C-1 Single unit vehicles with a manufacturer's gross weight rating of more than ten thousand (10,000) pounds	43.5%	14	40
C-2 Combination of a two-axle towing vehicle and a trailer with a gross trailer weight of three thousand (3,000) pounds or less	43.5%	14	40
C-3 Buses, regardless of the number of axles, not having a manufacturer's gross weight rating	43.5%	14	40
C-4 All combinations of vehicles in driveaway-towaway operations	43.5%	14	40
D All other vehicles and combinations of vehicles	43.5%	14	50

History: En. Sec. 2, Ch. 139, L. 1965; R.C.M. 1947, 32-21-143.2.

61-9-313. Maintenance of brakes. All brakes shall be maintained in good working order and shall be so adjusted as to operate as equally as practicable with respect to the wheels on opposite sides of the vehicle.

History: En. Sec. 3, Ch. 139, L. 1965; R.C.M. 1947, 32-21-143.3.

61-9-314. Hydraulic brake fluid. (1) The term "hydraulic brake fluid" as used in this section shall mean the liquid medium through which force is transmitted to the brakes in the hydraulic brake system of a vehicle.

(2) Hydraulic brake fluid shall be distributed and serviced with due regard for the safety of the occupants of the vehicle and the public.

(3) The division shall, after public hearing following due notice, adopt and enforce regulations for the administration of this section and shall adopt and publish standards and specifications for hydraulic brake fluid which shall correlate with, and so far as practicable conform to, the then current standards and specifications of the society of automotive engineers applicable to such fluid.

(4) No person shall distribute, have for sale, offer for sale, or sell any hydraulic brake fluid unless it complies with the requirements of this section.

No person shall service any vehicle with brake fluid unless it complies with the requirements of this section.

History: En. Sec. 4, Ch. 139, L. 1965; R.C.M. 1947, 32-21-143.4.

61-9-315. Brakes on motor-driven cycles. (1) The division is authorized to require an inspection of the brake on any motor-driven cycle and to disapprove any brake which it finds will not comply with the performance ability standard set forth in this part or which in its opinion is not designed or constructed to insure reasonable and reliable performance in actual use.

(2) The division may refuse to register or may suspend or revoke the registration of any vehicle referred to in this section when it has been determined that the brake thereon does not comply with the provisions of this section.

(3) No person may operate on any highway any vehicle referred to in this section if the division has disapproved the brake equipment upon such vehicle or type of vehicle.

History: En. Sec. 141, Ch. 263, L. 1955; R.C.M. 1947, 32-21-144; amd. Sec. 72, Ch. 421, L. 1979.

Part 4

Miscellaneous Regulations

61-9-401. Horns and warning devices. (1) Every motor vehicle when operated upon a highway shall be equipped with a horn in good working order and capable of emitting sound audible under normal conditions from a distance of not less than 200 feet, but no horn or other warning device shall emit an unreasonably loud or harsh sound or a whistle. The driver of a motor vehicle shall when reasonably necessary to insure safe operation give audible warning with his horn but shall not otherwise use such horn when upon a highway.

(2) No vehicle shall be equipped with nor shall any person use upon a vehicle any siren, whistle, or bell, except as otherwise permitted in this section.

(3) It is permissible but not required that any commercial vehicle be equipped with a theft alarm signal device which is so arranged that it cannot be used by the driver as an ordinary warning signal.

(4) Any authorized emergency vehicle may be equipped with a siren, whistle, or bell capable of emitting sound audible under normal conditions from a distance of not less than 500 feet and of a type approved by the division, but such siren shall not be used except when such vehicle is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law, in which said latter events the driver of such vehicle shall sound said siren when reasonably necessary to warn pedestrians and other drivers of the approach thereof.

History: En. Sec. 142, Ch. 263, L. 1955; R.C.M. 1947, 32-21-145.

61-9-402. Audible and visual signals on vehicles. (1) A police vehicle shall be equipped with a siren capable of giving an audible signal and may, but need not, be equipped with alternately flashing or rotating red or blue lights as specified herein. The use of signal equipment described herein shall impose upon the drivers of other vehicles the obligation to yield right-of-way and/or to stop and to proceed past such signal or light only with caution and at a speed which is no greater than is reasonable and proper under the conditions existing at the point of operation.

(2) Every authorized emergency vehicle shall, in addition to any other equipment and distinctive markings required by this chapter, be equipped with a siren and an alternately flashing or rotating red light as specified herein.

(3) Every authorized emergency vehicle shall, in addition to any other equipment and distinctive markings required by this chapter, be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, which shall be capable of displaying to the front two alternately flashing red lights located at the same level and to the rear two alternately flashing red lights located at the same level, and these lights shall have sufficient intensity to be visible at 500 feet in normal sunlight.

(4) Every bus used for the transportation of school children shall, in addition to any other equipment and distinctive markings required by this chapter, be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, displaying to the front two red and two amber alternating flashing lights and to the rear two red and two amber alternating flashing lights. These lights shall have sufficient intensity to be visible at 500 feet in normal sunlight. The warning lights shall be of a type and located on each bus as prescribed by the state board of education and approved by the division.

(5) Police vehicles and authorized emergency vehicles may, and emergency service vehicles shall, in addition to any other equipment and distinctive markings required by this chapter be equipped with alternately flashing or rotating amber lights as specified herein. The use of signal equipment described herein shall impose upon the drivers of other vehicles the obligation to yield right-of-way and/or to stop and to proceed past such signal or light only with caution and at a speed which is no greater than is reasonable and proper under the conditions existing at the point of operation.

(6) Blue, red, and amber lights required in subsections (1), (2), and (3) of this section shall be mounted as high as and as widely spaced laterally as practicable and capable of displaying to the front two alternately flashing lights of the specified color located at the same level and to the rear two alternately flashing lights of the specified color located at the same level or as an alternative, one rotating light of the specified color, mounted as high as is practicable which shall be both visible front and rear. These lights shall have sufficient intensity to be visible at 500 feet in normal sunlight. The use of blue lights as required in subsection (1) of this section shall be restricted to police vehicles as defined in 61-1-118.

History: **En. Sec. 129, Ch. 263, L. 1955; amd. Sec. 1, Ch. 40, L. 1959; amd. Sec. 1, Ch. 250, L. 1965; amd. Sec. 4, Ch. 153, L. 1975; R.C.M. 1947, 32-21-132.**

Cross-References

Police vehicles and authorized emergency vehicles, 61-8-107.

61-9-403. Mufflers — prevention of noise. (1) Every motor vehicle shall at all times be equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise and annoying smoke, and no person shall use a muffler cutout, bypass, or similar device upon a motor vehicle on a highway.

(2) The engine and power mechanism of every motor vehicle shall be so equipped and adjusted as to prevent the escape of excessive fumes or smoke.

History: En. Sec. 143, Ch. 263, L. 1955; R.C.M. 1947, 32-21-146.

61-9-404. Mirrors. On and after January 1, 1960, every motor vehicle shall be equipped with a mirror so located as to reflect to the driver a view of the highway for a distance of at least 200 feet to the rear of such motor vehicle.

History: En. Sec. 144, Ch. 263, L. 1955; amd. Sec. 1, Ch. 113, L. 1959; R.C.M. 1947, 32-21-147.

61-9-405. Windshields to be unobstructed and equipped with wipers. (1) No person shall drive any motor vehicle with any sign, poster, or other nontransparent material upon the front windshield, side wings, or side or rear windows of such vehicle which obstructs the driver's clear view of the highway or any intersecting highway.

(2) The windshield on every motor vehicle shall be equipped with a device for clearing rain, snow, or other moisture from the windshield, which device shall be so constructed as to be controlled or operated by the driver of the vehicle.

(3) Every windshield wiper upon a motor vehicle shall be maintained in good working order.

History: En. Sec. 145, Ch. 263, L. 1955; R.C.M. 1947, 32-21-148.

61-9-406. Restrictions as to tire equipment. (1) A solid rubber tire on a vehicle shall have rubber on its entire traction surface at least 1 inch thick above the edge of the flange of the entire periphery.

(2) A person may not operate or move on a highway a motor vehicle, trailer, or semitrailer having a metal tire in contact with the roadway.

(3) A tire on a vehicle moved on a highway may not have on its periphery a block, stud, flange, cleat, or spike, or other protuberance of a material other than rubber which projects beyond the tread of the traction surface of the tire, except that it is permissible to use farm machinery with tires having protuberances which will not injure the highway. It is also permissible to use tire chains of reasonable proportions or pneumatic tires, the traction surfaces of which have been embedded with material such as wood, wire, plastic or metal, which may not protrude more than one-sixteenth of an inch beyond the tire tread, upon a vehicle when required for safety because of snow, ice, or other conditions tending to cause a vehicle to skid. The use of pneumatic tires embedded as provided in this section is permitted only between October 1 and May 31 of each year, except that one of those tires may be used for a spare in case of tire failure. School buses equipped with such embedded pneumatic tires may operate from August 15 through the following June 15.

(4) The department of highways and local authorities in their respective jurisdictions may in their discretion issue special permits authorizing the operation upon a highway of farm tractors or other farm machinery, or of traction engines or tractors having movable tracks with transverse

corrugations upon the periphery of the movable tracks, the operation of which upon the highway would otherwise be prohibited under this section.

History: En. Sec. 146, Ch. 263, L. 1955; amd. Sec. 1, Ch. 92, L. 1967; amd. Sec. 1, Ch. 194, L. 1971; amd. Sec. 1, Ch. 192, L. 1973; amd. Sec. 67, Ch. 316, L. 1974; R.C.M. 1947, 32-21-149(a) thru (d).

61-9-407. Fenders, splash aprons, or flaps required on certain vehicles — dimension and location — violation a misdemeanor — penalty. (1) It shall be unlawful for any person to move, or permit to be moved, any truck, bus, truck tractor, trailer, or semitrailer, as defined in this title, upon the public highways without having first equipped the rearmost wheels or set of wheels of such vehicle with fenders, splash aprons, or flaps. Such fenders, splash aprons, or flaps shall be designed, constructed, and attached to the vehicle in such manner so as to arrest and deflect dirt, mud, water, rocks, and other substances which may be picked up by the rear wheels of such vehicle and thrown into the air, as follows:

(a) If the vehicle is equipped with fenders, the same shall extend in full width from a point above and forward of the center of the tire or tires over and to the rear thereof.

(b) If the vehicle is equipped with splash aprons or flaps, the same shall extend downward in full width from a point not lower than halfway between the center of the tire or tires and the top of said tire or tires and to the rear thereof.

(c) If the vehicle is in excess of 8,000 pounds gross vehicle weight, such fenders, splash aprons, or flaps shall extend downward to a point that is not more than 10 inches above the surface of the highway when the vehicle is empty.

(d) If the vehicle is 8,000 pounds or less gross vehicle weight such fenders, splash aprons, or flaps shall extend downward to a point that is not more than 20 inches above the surface of the highway when the vehicle is empty.

(2) Fenders, splash aprons, or flaps, as used in subsection (1) of this section, shall be deemed to be of sufficient size and construction as to comply with the requirements thereof, if constructed as follows:

(a) when measured on the cross-sections of the tread of the wheel or on the combined cross-sections of the treads of multiple wheels, such fender, splash apron, or flap extends at least to each side of the width of the tire or of the combined width of the multiple tires, as the case may be; and

(b) such fender, splash apron, or flap is so constructed as to be capable at all times of arresting and deflecting such dirt, mud, water, or other substance as may be picked up and carried by such wheel or wheels.

History: En. Sec. 1, Ch. 286, L. 1969; R.C.M. 1947, 32-21-149.1(a), (b).

61-9-408. Safety glazing material in motor vehicles. (1) On and after January 1, 1956, no person shall sell any new motor vehicle as specified herein, nor shall any new motor vehicle as specified herein be registered thereafter unless such vehicle is equipped with safety glazing material wherever glazing material is used in doors, windows, and windshields. The foregoing provisions shall apply to all passenger-type motor vehicles, including passenger buses and school buses, but in respect to trucks, including truck tractors, the requirements as to safety glazing material shall apply to all glazing material used in doors, windows, and windshields in the driver's compartments of such vehicles.

(2) The term "safety glazing materials" means glazing materials so constructed, treated, or combined with other materials as to reduce substantially in comparison with ordinary sheet glass or plate glass the likelihood of injury to persons by objects from exterior sources or by these safety glazing materials when they may be cracked or broken.

History: **En. Sec. 147, Ch. 263, L. 1955; R.C.M. 1947, 32-21-150.**

61-9-409. Seatbelts required in new vehicles. It is unlawful for any person to buy, sell, lease, trade, or transfer from or to Montana residents at retail an automobile which is manufactured or assembled commencing with the 1966 models unless such vehicle is equipped with safety belts installed for use in the left front and right front seats thereof, and no such vehicle shall be operated in this state unless such belts remain installed.

History: **En. Sec. 1, Ch. 115, L. 1965; R.C.M. 1947, 32-21-150.1.**

61-9-410. Specifications for seatbelts. All such safety belts must be of a type and must be installed in a manner approved by the division of motor vehicles. The division shall establish specifications and requirements for approved types of safety belts and attachments thereto. The division will accept, as approved, all seatbelt installations and the belt and anchor meeting the society of automotive engineers' specifications.

History: **En. Sec. 2, Ch. 115, L. 1965; R.C.M. 1947, 32-21-150.2.**

61-9-411. Certain vehicles to carry flares or other warning devices. (1) No person shall operate any motor truck of 1-ton capacity or greater, passenger bus, or truck tractor upon any highway outside the corporate limits of municipalities at any time unless there shall be carried in such vehicle, except as provided in subsection (2), the following equipment:

(a) at least three flares or three red electric lanterns or three portable red emergency reflectors each of which shall be capable of being seen and distinguished at a distance of not less than 600 feet under normal atmospheric conditions at nighttime. No portable reflector unit shall be used for the purpose of compliance with the requirements of this section unless it is so designed and constructed as to display a minimum of 24 square inches of reflective surface, or two reflecting elements; one above the other, either of which shall be capable of reflecting red light clearly visible from all distances within 600 feet to 100 feet under normal atmospheric conditions at night when directly in front of lawful upper beams of headlamps;

(b) at least three red-burning fusees unless red electric lanterns or red portable emergency reflectors are carried;

(c) at least two red cloth flags, no less than 12 inches square, with standards to support such flags.

(2) No person shall operate at the time and under the conditions stated in subsection (1) any motor vehicle used for the transportation of explosives, any cargo tank truck used for the transportation of flammable liquids or compressed gases, or any motor vehicle using compressed gas as a fuel unless there shall be carried in such vehicle three red electric lanterns or three portable red emergency reflectors meeting the requirements of subsection (1), and

there shall not be carried in any said vehicle any flares, fusees, or signal produced by flame.

(3) As an alternative to the equipment required in subsections (1) and (2), three emergency reflective triangles conforming with U.S. department of transportation motor vehicle safety standard 125 may be carried.

History: En. Sec. 148, Ch. 263, L. 1955; amd. Sec. 1, Ch. 108, L. 1957; amd. Sec. 1, Ch. 70, L. 1975; R.C.M. 1947, 32-21-151.

61-9-412. Display of warning devices when vehicle disabled. (1) Whenever any motor truck, passenger bus, truck, tractor, trailer, semitrailer, or pole trailer is disabled upon the traveled portion of any highway or the shoulder thereof outside of any municipality at any time when lighted lamps are required on vehicles the driver of such vehicle shall display the following warning devices upon the highway during the time the vehicle is so disabled on the highway except as provided in subsection (2):

(a) A lighted fusee, a lighted red electric lantern, or a portable red emergency reflector shall be immediately placed at the traffic side of the vehicle in the direction of the nearest approaching traffic.

(b) As soon thereafter as possible but in any event within the burning period of the fusee (15 minutes), the driver shall place three liquid burning flares (pot torches) or three lighted red electric lanterns or three portable red emergency reflectors on the traveled portion of the highway in the following order:

(i) one approximately 100 feet from the disabled vehicle in the center of the lane occupied by such vehicle and toward traffic approaching in that lane;

(ii) one approximately 100 feet in the opposite direction from the disabled vehicle and in the center of the traffic lane occupied by such vehicle;

(iii) one at the traffic side of the disabled vehicle not less than 10 feet rearward or forward thereof in the direction of the nearest approaching traffic. If a lighted red electric lantern or a red portable emergency reflector has been placed at the traffic side of the vehicle in accordance with subsection (1)(b)(i) of this section, it may be used for this purpose.

(2) Whenever any vehicle referred to in this section is disabled within 500 feet of a curve, hillcrest, or other obstruction to view, the warning signal in that direction shall be so placed as to afford ample warning to other users of the highway but in no case less than 500 feet from the disabled vehicle.

(3) Whenever any vehicle of a type referred to in this section is disabled upon any roadway of a divided highway during the time that lights are required, the appropriate warning devices prescribed in subsections (1) and (5) shall be placed as follows:

(a) one at a distance of approximately 200 feet from the vehicle, in the center of the lane occupied by the stopped vehicle and in the direction of traffic approaching in that lane;

(b) one at a distance of approximately 100 feet from the vehicle, in the center of the lane occupied by the vehicle and in the direction of traffic approaching in that lane;

(c) one at the traffic side of the vehicle and approximately 10 feet from the vehicle in the direction of the nearest approaching traffic.

(4) Whenever any vehicle of a type referred to in this section is disabled upon the traveled portion of a highway or the shoulder thereof outside of any

municipality at any time when the display of fusees, flares, red electric lanterns, or portable red emergency reflectors is not required, the driver of the vehicle shall display two red flags upon the roadway in the lane of traffic occupied by the disabled vehicle, or at a distance of approximately 100 feet in advance of the vehicle, and one at a distance of approximately 100 feet to the rear of the vehicle.

(5) Whenever any motor vehicle used in the transportation of explosives or any cargo tank truck used for the transportation of any flammable liquid or compressed flammable gas, or any motor vehicle using compressed gas as a fuel, is disabled upon any highway of this state at any time or place mentioned in subsection (1) of this section, the driver of such vehicle shall immediately display the following warning devices:

(a) one red electric lantern or portable red emergency reflector placed on the roadway at the traffic side of the vehicle and two red electric lanterns or portable red reflectors, one placed approximately 100 feet to the front and one placed approximately 100 feet to the rear of the disabled vehicle in the center of the traffic lane occupied by such vehicle;

(b) flares, fusees, or signals produced by flame shall not be used as warning devices for disabled vehicles of the type mentioned in this subsection (5).

(6) The flares, fusees, red electric lanterns, portable red emergency reflectors and flags to be displayed as required in this section shall conform with the requirements of 61-9-411 applicable thereto.

History: En. Sec. 149, Ch. 263, L. 1955; R.C.M. 1947, 32-21-152.

61-9-413. Vehicles transporting explosives. (1) Any person operating any vehicle transporting any explosive as a cargo or part of a cargo upon a highway shall at all times comply with the provisions of this section.

(2) Said vehicle shall be marked or placarded on each side and the rear with the word "EXPLOSIVES" in letters not less than 8 inches high, or there shall be displayed on the rear of such vehicle a red flag not less than 24 inches square marked with the word "DANGER" in white letters 6 inches high.

(3) Every said vehicle shall be equipped with not less than two fire extinguishers, filled and ready for immediate use, and placed at a convenient point on the vehicle so used.

(4) The division is hereby authorized and directed to promulgate such additional regulations governing the transportation of explosives and other dangerous articles by vehicles upon the highway as it shall deem advisable for the protection of the public.

History: En. Sec. 150, Ch. 263, L. 1955; R.C.M. 1947, 32-21-153.

61-9-414. Logging trucks. Every truck or truck trailer combination actively engaged in transporting logs shall be equipped as follows:

(1) (a) At least three binders shall be required as standard equipment on any truck or truck trailer combination actively engaged in transporting logs upon the public highways of the state.

(b) Such binders shall be of steel chain or steel cable.

(c) The minimum diameter of any portion of such binders shall be three-eighths inch.

(d) Such binders shall be of sufficient length to encompass any load when secured by a fastener.

(2) (a) Binders used to secure loads of logs together shall be fastened by means of a fastener.

(b) The minimum diameter of the portions of the fastener under direct stress from the binder shall be three-eighths inch.

(c) The handle, or leverage portion of the fastener, when in use in tightening and holding the binder shall be securely fastened to the binder or to the fastener in such a way that it cannot be accidentally loosened.

(3) At least two binders shall be in use on all loads. Such binders shall be placed as close as reasonably possible to the front and rear bunks.

(4) In the event short logs are loaded on top of longer logs, sufficient binders shall be used to secure both ends of such short logs to the main body of the load. No logs may extend laterally beyond the stakes which form the outer boundary of the load at the top of such stakes. Logs or poles loaded above the tops of the stakes shall be loaded in a pyramidal fashion.

History: En. Sec. 119, Ch. 263, L. 1955; amd. Sec. 1, Ch. 233, L. 1959; amd. Sec. 1, Ch. 182, L. 1974; R.C.M. 1947, 32-21-122(part).

61-9-415. Slow-moving vehicles. (1) It shall be unlawful after January 1, 1970, for any person to operate on the roadway of any state highway, farm, rural, or county roads and city streets of this state any slow-moving vehicle or equipment, any animal-drawn vehicle, or any other machinery designed for use at speeds less than 25 miles per hour, including all road construction or maintenance machinery, except when engaged in actual construction or maintenance work either guarded by a flagman or clearly visible warning signs, which normally travels or is normally used at a speed of less than 25 miles per hour, unless there is displayed on the rear thereof an emblem as described in and displayed as provided in subsection (2) of this section. The requirement of such emblem shall be in addition to any lighting devices required by law.

(2) The emblem required by subsection (1) of this section shall be of substantial construction, and shall be a based-down equilateral triangle of fluorescent yellow-orange film or equivalent quality paint with a base of 14 inches and an altitude of 12 inches. Such triangle shall be bordered with reflective red strips having a minimum width of 1 ¾ inches, with the vertices of the overall triangle truncated such that the remaining altitude shall be a minimum of 14 inches. Such emblem shall be mounted on the rear of such vehicle near the horizontal geometric center of the vehicle at a height of 3 to 5 feet above the roadway, and shall be maintained in a clean, reflective condition.

(3) In addition to the foregoing requirements, on a highway that has only two lanes for traffic moving in opposite directions, when an overtaking vehicle being operated in conformity with 61-8-303 does not have a clear lane for passing as required by 61-8-325, the driver of a slower-moving, overtaken vehicle shall, at the first opportunity, whenever sufficient area for a safe turnout exists, move the overtaken vehicle off the main-traveled portion of the highway until the overtaking vehicle is safely clear of the overtaken vehicle.

History: En. Sec. 127, Ch. 263, L. 1955; amd. Sec. 1, Ch. 247, L. 1969; R.C.M. 1947, 32-21-130(b), (c), (e).

61-9-416. Commercial tow car requirements. (1) Every commercial tow car used to tow a vehicle by means of a crane, hoist, towbar, towline, or dolly shall be:

(a) equipped with and carry not less than two red flares or two red lanterns or two warning lights or reflectors, which reflectors shall be of a type approved by the division;

(b) equipped with at least two highway warning signs of a uniform type prescribed by the division and shall be so designed as to be visible both day and night. The operator of a commercial tow car used for the purpose of rendering assistance to other vehicles shall, when the rendering of assistance necessitates the obstruction of any portion of the roadway outside a business or residence district, place a highway warning sign 200 feet in advance of and 200 feet to the rear of the disabled vehicle, except as otherwise provided in this section. When a motor vehicle is disabled on the highway, such tow car operator called to render assistance during the hours of darkness shall immediately upon arrival place warning signs upon the highway as prescribed in this section and in addition thereto shall place not less than one red flare, red lantern, or warning light or reflector in close proximity to each warning sign.

(c) equipped with and carry a fire extinguisher of at least 2 quart capacity of a type capable of extinguishing a fire;

(d) equipped with a lamp emitting a flashing or steady red light mounted on top of the cab of the tow car or on the top of the crane or hoist if such light can be seen from the front of the tow car. The light from such lamp must be visible for a distance of 1,000 feet under normal atmospheric conditions, and shall be mounted in such a manner that it can be securely fastened with the lens of the lamp facing the rear of the tow car upon which it is mounted. When standing at the location from which the disabled vehicle is to be towed, the operator of the tow car may unfasten the red light and place it in any position deemed advisable to warn approaching drivers. When the disabled vehicle is ready for towing the red light must be turned to rear of the tow car upon which it is mounted and securely locked in this position. Additional red lights of an approved type may be displayed at either or both sides of the tow car as the case may warrant during the period of preparation at the location from which the disabled vehicle is to be towed.

(e) equipped with one or more brooms, and the operator of the tow car engaged to remove a disabled vehicle from the scene of an accident shall remove all glass and debris deposited upon the roadway by the disabled vehicle which is to be towed;

(f) equipped with and carry a shovel, and whenever practical the tow car operator engaged to remove any disabled vehicle shall spread dirt upon that portion of the roadway where oil or grease has been deposited by such disabled vehicle;

(g) equipped with and carry a portable electrical extension cord for use in displaying a light on the rear of the disabled vehicle. The length of such extension cord shall not be less than the length of the combined vehicles, and whenever a disabled vehicle is towed during the hours of darkness and the rear lamp or lamps on the disabled vehicle cannot be lighted, the tow car operator shall provide for such rear light by means of the extension cord herein referred to.

(2) The owner or operator of a commercial tow car who complies with the requirements of this section may stop or park such tow car upon a highway for the purpose of rendering assistance to a disabled vehicle, notwithstanding other provisions of this code.

History: **En. Sec. 1, Ch. 201, L. 1959; R.C.M. 1947, 32-21-161.**

61-9-417. Headgear required for minor motorcycle riders. An operator and passenger under 18 years of age of any motorcycle operated upon the streets or highways of this state shall wear protective headgear upon the head. The headgear shall meet standards established by the department of justice.

History: **En. Sec. 1, Ch. 398, L. 1973; amd. Sec. 1, Ch. 179, L. 1974; amd. Sec. 1, Ch. 273, L. 1974; amd. Sec. 1, Ch. 54, L. 1977; R.C.M. 1947, 32-21-105.1(1).**

61-9-418. Motorcycle noise suppression devices. All motorcycles operated on the streets and highways of this state shall be equipped at all times with noise suppression devices, including an exhaust muffler, in good working order and in constant operation. In addition, all motorcycles operating on streets and highways shall meet the following noise decibel limitations, on the standard A scale, such decibel limitations to be measured at 50 feet distant from the closest point to the motorcycle:

(1) any motorcycle manufactured prior to 1970	92 db(A)
(2) any motorcycle manufactured after 1969 but prior to 1973	88 db(A)
(3) any motorcycle manufactured after 1972 but prior to 1975	86 db(A)
(4) any motorcycle manufactured after 1974 but prior to 1978	80 db(A)
(5) any motorcycle manufactured after 1977 but prior to 1988	75 db(A)
(6) any motorcycle manufactured after 1987	70 db(A)

History: **En. Sec. 1, Ch. 398, L. 1973; amd. Sec. 1, Ch. 179, L. 1974; amd. Sec. 1, Ch. 273, L. 1974; amd. Sec. 1, Ch. 54, L. 1977; R.C.M. 1947, 32-21-105.1(2).**

Part 5

Enforcement — Penalties

61-9-501. Inspections by officers of the department. (1) The division or its agents may at any time upon reasonable cause to believe that a vehicle is unsafe or not equipped as required by law or that its equipment is not in proper adjustment or repair require the driver of such vehicle to stop and submit such vehicle to an inspection and such test with reference thereto as may be appropriate.

(2) In the event such vehicle and its equipment are found to be in safe condition and in full compliance with the law, the officer making such inspection may issue to the driver an official certificate of inspection and approval of such vehicle specifying those parts or equipment so inspected and approved.

(3) In the event such vehicle is found to be in unsafe condition or any required part or equipment is not present or is not in proper repair and

adjustment the officer shall give a written notice to the driver and shall send a copy to the division. Said notice shall specify the deficiencies and require that such vehicle be placed in safe condition and its equipment in proper repair and adjustment within 5 days.

History: **En. Sec. 152, Ch. 263, L. 1955; R.C.M. 1947, 32-21-155.**

61-9-502. Semiannual inspection of school buses. (1) The division shall perform the semiannual inspection of school buses, one of which shall be at least 30 days prior to the beginning of the school term, and reinspect the buses, if necessary, before the beginning of the school term.

(2) The division's inspection shall determine if the school buses meet the minimum standards for school buses as adopted by the board of public education.

History: **En. 32-21-155.1 by Sec. 2, Ch. 179, L. 1969; amd. Sec. 1, Ch. 141, L. 1973; R.C.M. 1947, 32-21-155.1.**

61-9-503. Owners and drivers to comply with inspection laws. (1) No person driving a vehicle may refuse to submit the vehicle to an inspection and test when required to do so by the division or an authorized officer or employee of the division.

(2) Every owner or driver, upon receiving a notice as provided in 61-9-501, shall comply therewith and shall within 5 days have the deficiencies corrected and forward notification of the correction to the division. In lieu of compliance with this subsection, the vehicle may not be operated, except as provided in subsection (3).

(3) No person may operate any vehicle after receiving a notice with reference thereto as above provided except as may be necessary to return the vehicle to the residence or place of business of the owner or driver, if within a distance of 20 miles, or to a garage until the vehicle and its equipment have been placed in proper repair and adjustment and otherwise made to conform to the requirements of this chapter.

History: **En. Sec. 153, Ch. 263, L. 1955; R.C.M. 1947, 32-21-156; amd. Sec. 73, Ch. 421, L. 1979.**

61-9-504. Rules. The division is hereby empowered to make additional rules governing the use of safety equipment on motor vehicles, vehicles, and/or combination of vehicles, that is, trailer hitches, safety chains, mounts, tow bars, and other similar equipment as it shall deem advisable for the protection of the public.

History: **En. Sec. 119, Ch. 263, L. 1955; amd. Sec. 1, Ch. 233, L. 1959; amd. Sec. 1, Ch. 182, L. 1974; R.C.M. 1947, 32-21-122(part).**

61-9-505 through 61-9-510 reserved.

61-9-511. Violation of chapter — penalty. (1) It is a misdemeanor for any person to violate any of the provisions of this chapter unless such violation is by this chapter or other law of this state declared to be a felony.

(2) Every person convicted of a misdemeanor for a violation of any of the provisions of this chapter for which another penalty is not provided shall for a first conviction thereof be punished by a fine of not less than $10 or more than $100 or by imprisonment for not more than 10 days. For a second conviction within 1 year thereafter such person shall be punished by a fine of

not less than $25 or more than $200 or by imprisonment for not more than 20 days or by both such fine and imprisonment. Upon a third or subsequent conviction within 1 year after the first conviction such person shall be punished by a fine of not less than $50 or more than $500 or by imprisonment for not more than 6 months or by both fine and imprisonment.

(3) On failure of payment of fines, the offender in cases of misdemeanor shall be imprisoned in the county jail in the county in which the offense has been committed, and said imprisonment shall be computed upon the basis of $2 of said fine for each day's incarceration.

(4) Upon conviction the court costs, or any part thereof, may also be assessed against the defendant in the discretion of the court.

History: En. Sec. 154, Ch. 263, L. 1955; R.C.M. 1947, 32-21-157.

61-9-512. Violation of rules — penalty. Any violation of any rules adopted by the division shall be deemed a misdemeanor.

History: En. Sec. 119, Ch. 263, L. 1955; amd. Sec. 1, Ch. 233, L. 1959; amd. Sec. 1, Ch. 182, L. 1974; R.C.M. 1947, 32-21-122(part).

61-9-513. Violation of general lighting requirement and slow-moving vehicle provisions — penalty. Any person violating the provisions of 61-9-216 or 61-9-415 shall be subject to penalty as provided in 61-9-511.

History: En. Sec. 127, Ch. 263, L. 1955; amd. Sec. 1, Ch. 247, L. 1969; R.C.M. 1947, 32-21-130(d).

61-9-514. Unauthorized use of firefighter's private vehicle — penalty. Any person violating the provisions of 61-9-227 is guilty of a misdemeanor.

History: En. Sec. 2, Ch. 154, L. 1957; R.C.M. 1947, 32-21-141.2.

61-9-515. Violations of provisions relating to fenders, splash aprons, or flaps — penalty. Any person violating any of the provisions of 61-9-407 shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $10 or more than $25 or by imprisonment in the county jail for a period of not more than 30 days or by both such fine and imprisonment.

History: En. Sec. 1, Ch. 286, L. 1969; R.C.M. 1947, 32-21-149.1(c).

61-9-516. Penalty for seatbelt violations. Any person who shall violate any of the provisions of 61-9-409 and 61-9-410 shall be guilty of a misdemeanor and upon conviction shall be fined not to exceed $100.

History: En. Sec. 3, Ch. 115, L. 1965; R.C.M. 1947, 32-21-150.3.

61-9-517. Violation of towing requirements — penalty. Any person violating any of the provisions of 61-9-416 shall be deemed guilty of a misdemeanor and subject to a penalty not to exceed $100.

History: En. Sec. 2, Ch. 201, L. 1959; R.C.M. 1947, 32-21-162.

61-9-518. Violation of motorcycle requirements — penalty. (1) A person convicted of the violation of 61-9-417 shall be fined $5.

(2) A person convicted of the violation of 61-9-418 shall be punished by a fine of not less than $10 or more than $100 or by imprisonment for not

more than 10 days or by both such fine and imprisonment for the first such conviction. For a second conviction within 1 year thereafter, such person shall be punished by a fine of not less than $25 or more than $200 or by imprisonment for not more than 20 days or by both such fine and imprisonment. Upon a third or subsequent conviction within 1 year after the first conviction, such person shall be punished by a fine of not less than $50 or more than $500 or by imprisonment for not more than 6 months or by both such fine and imprisonment.

History: **En. Sec. 1, Ch. 398, L. 1973; amd. Sec. 1, Ch. 179, L. 1974; amd. Sec. 1, Ch. 273, L. 1974; amd. Sec. 1, Ch. 54, L. 1977; R.C.M. 1947, 32-21-105.1(3), (4).**

61-9-519. Violation of tire restrictions — penalty. A person violating 61-9-406 is guilty of a misdemeanor.

History: **En. Sec. 146, Ch. 263, L. 1955; amd. Sec. 1, Ch. 92, L. 1967; amd. Sec. 1, Ch. 194, L. 1971; amd. Sec. 1, Ch. 192, L. 1973; amd. Sec. 67, Ch. 316, L. 1974; R.C.M. 1947, 32-21-149(e).**

CHAPTER 10

SIZE — WEIGHT — LOAD

Part 1 — Standards, Permits, and Fees

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Part 11 — Multistate Highway Transportation Agreement

61-10-1101. Multistate Highway Transportation Agreement — enactment and text.

Part 1

Standards, Permits, and Fees

61-10-101. Standards of maximum dimensions, weights, etc. The standards provided for in 61-10-102 through 61-10-110 govern the maximum dimensions, weights, and other characteristics of motor vehicles operating over the highways in the state to the exclusion of other standards or other requirements respecting the subject matter.

History: En. 32-1123.1 by Sec. 12, Ch. 316, L. 1974; R.C.M. 1947, 32-1123.1.

61-10-102. Width. (1) No vehicle, including a bus, unloaded or with load, may have a total outside width in excess of 102 inches. This width for buses is allowed only on paved highways 20 feet or more in width.

(2) This restriction does not apply to an implement of husbandry or a vehicle used for hauling hay, moved or propelled upon the highway during daylight hours for a distance of not more than 100 miles if the movement is incidental to the farming operations of the owner of the implement of husbandry or the vehicle used for hauling hay. If the implement or vehicle has a width in excess of 12 feet, it shall be preceded by flagman escorts for the purpose of warning other highway users. This restriction does not apply to dual-wheel tractors under 15 feet overall width which are used in farming operations. The rear of the implement of husbandry or vehicle used for hauling hay shall properly display lights which meet the standard requirements

of 61-9-219. However, if the highway passes through a hazardous area, the implements or vehicles must be preceded and followed by flagman escorts.

History: En. 32-1123.3 by Sec. 14, Ch. 316, L. 1974; amd. Sec. 1, Ch. 314, L. 1975; R.C.M. 1947, 32-1123.3; amd. Sec. 74, Ch. 421, L. 1979.

61-10-103. Height. A vehicle, unladen or with load, may not exceed a height of 13 feet, 6 inches.

History: En. 32-1123.4 by Sec. 15, Ch. 316, L. 1974; R.C.M. 1947, 32-1123.4.

61-10-104. Length. (1) A single truck, bus, or any self-propelled vehicle, unladen or with load, may not have an overall length, inclusive of front and rear bumpers, in excess of 40 feet.

(2) A combination of truck and trailer, tractor and semitrailer, tractor-semitrailer-full-trailer, or tractor-semitrailer-semitrailer converted to a trailer by use of a dolly equipped with a fifth wheel may not have an overall length, inclusive of front and rear bumpers, in excess of 65 feet. If the combination consists of more than two units, the rear units of the combination shall be equipped with breakaway brakes.

(3) A motor vehicle may not tow more than one motor vehicle, and a motor vehicle may not draw more than two motor vehicles attached to it by the dual saddle-mount method; that is, by mounting the front wheels of one vehicle on the bed of another, leaving only the rear wheels of the vehicle in contact with the roadway, nor may this combination have an overall length, inclusive of front and rear bumpers, in excess of 65 feet.

(4) A passenger vehicle or truck of less than 2,000 pounds "manufacturers' rated capacity" may not tow more than one trailer or semitrailer, nor may this combination have an overall length, inclusive of front and rear bumpers, in excess of 65 feet.

History: En. 32-1123.5 by Sec. 16, Ch. 316, L. 1974; amd. Sec. 1, Ch. 20, L. 1975; R.C.M. 1947, 32-1123.5; amd. Sec. 2, Ch. 40, L. 1981.

Compiler's Comments

1981 Amendment: Increased the maximum length in (2), (3), and (4) from 60 to 65 feet.

61-10-105. Permissible loads. (1) An axle may not carry a load in excess of 18,000 pounds. An axle load is defined as the total load transmitted to the road by all wheels whose centers are included between two parallel transverse vertical planes 40 inches apart, extending across the full width of the vehicle.

(2) (a) The gross weight of a group of axles of a vehicle or combination of vehicles, if the distance between first and last axles of a group of axles is 18 feet or less, and the gross weight of a vehicle if the distance between the first and last axles of all the axles of the vehicle is 18 feet or less, may not exceed that set forth in the following table of weights:

Distance in Feet Between the First and Last Axles of any Group of Axles of any Vehicle or Combination of Vehicles or Between the First and Last Axles of all of the Axles of any Vehicle.	Maximum Gross Weight, in Pounds, of any Group of Axles of any Vehicle or Combination of Vehicles, or of any Vehicle.
4	32,000
5	32,000
6	32,200
7	32,900
8	33,600
9	34,300
10	35,000
11	35,700
12	36,400
13	37,100
14	43,200
15	44,000
16	44,800
17	45,600
18	46,400

(b) The gross weight of a vehicle or combination of vehicles, if the distance between the first and last axles of the vehicle or combination of vehicles is more than 18 feet, may not exceed that set forth in the following table of weights:

Distance in Feet Between the First and Last Axles of all the Axles of a Vehicle or Combination of Vehicles.	Maximum Gross Weight, in Pounds, of any Vehicle or Combination of Vehicles.
18	46,400
19	47,200
20	48,000
21	48,800
22	49,600
23	50,400
24	51,200
25	55,250

26	56,100
27	56,950
28	57,800
29	58,650
30	59,500
31	60,350
32	61,200
33	62,050
34	62,900
35	63,750
36	64,600
37	65,450
38	66,300
39	68,000
40	70,000
41	72,000
42	73,280
43	73,280
44	73,280
45	73,280
46	73,280
47	73,280
48	73,280
49	73,280
50	73,280
51	73,280
52	73,600
53	74,400
54	75,200
55	76,000
56	76,400
57	76,800

(3) Notwithstanding a vehicle's conformance with the requirements of subsection (1), its maximum load per inch of tire width, excluding the steering axle, may not exceed 600 pounds, based on the following table showing credit in inches allowed for calculating total pounds permissible per tire:

Multiply Inches Allowed by Load Limit Per Inch of Tire Width

Tubeless Tire Size	Conventional Replacement Tubed Tire Size	Inches Credit Allowed When Calculating Total Pounds Permissible Per Tire
6.00-16	6.00-16	6
6.50-16	6.50-16	6-½
7-17.5	7.00-15	7
7-22.5	6.50-20 & 7.00-20	7
8-17.5	7.00-16, 7.50-15 & 7.50-16	7-½
8-19.5	7.00-17 & 7.50-17	7-½
8-22.5	7.50-20	7-½
9-22.5	8.25-20	8-¼
10-22.5	9.00-20	9
11-22.5	10.00-20	10
11-24.5	10.00-22	10
12-22.5	11.00-20	11
12-24.5	11.00-22	11

Duplex Tires (new type single tires to replace dual tires)

Load limits shall be computed for duplex tires on the number of inches shown on tire marking. They are not to be computed on the basis of inches of tire replaced.

Example:

18" duplex tire at 400 pounds for inch width — 7,200 pounds

History: En. 32-1123.6 by Sec. 17, Ch. 316, L. 1974; R.C.M. 1947, 32-1123.6; amd. Sec. 1, Ch. 366, L. 1981.

Compiler's Comments

1981 Amendment: Added subsection (3).

Effective Date: Section 3, Ch. 366, L. 1981, provided: "This act is effective July 1, 1981."

61-10-106. Measuring distance between axles. The distance between axles shall be measured to the nearest foot. When a fractional measurement is exactly one-half foot, the next larger whole number shall be used.

History: En. 32-1123.8 by Sec. 19, Ch. 316, L. 1974; R.C.M. 1947, 32-1123.8.

61-10-107. Maximum gross weight — when permit required. (1) An axle may not carry a load in excess of 20,000 pounds, and no two consecutive axles more than 40 inches or less than 96 inches apart may carry a load in excess of 34,000 pounds. For purposes of this section, axles 40 inches or less apart are considered as a single axle. A vehicle or combination may not have more than nine axles. The maximum gross weight allowed on a vehicle or combination so authorized by this section shall be determined by the formula W equals 500 (LN/N minus 1 plus 12N plus 36) in which W equals gross weight, L equals wheel base in feet, and N equals number of axles. However, the maximum allowable gross weight on a group of axles may not exceed the following values:

2 axles	40,000 pounds

3 axles	60,000 pounds
4 axles	80,000 pounds
5 axles	85,500 pounds
6 axles	90,000 pounds
7 axles	105,500 pounds
8 axles	105,500 pounds
9 axles	105,500 pounds

(2) Notwithstanding a vehicle's conformance with the requirements of subsection (1), its maximum load per inch of tire width, excluding the steering axle, may not exceed 600 pounds, based on the table in 61-10-105(3).

(3) If the gross weight of a vehicle or combination exceeds 80,000 pounds, the vehicle or combination must have a special permit, which may be issued in the discretion of the department of highways based on evaluation of safety, highway capacity, and economics of highway maintenance and vehicle operation. The fee shall be $20 per trip permit or $100 per term permit. A term permit may not be issued for a period of time greater than the period for which the GVW license is valid. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department, purchase permits to expire with their registration. Permits may specify highway routing.

(4) A special permit issued under subsection (1) for the transportation of agricultural products by farm vehicles from a harvesting combine or other harvesting machinery to the point of first unloading shall be for the full term of the harvest season of the agricultural product transported.

(5) This section does not apply to highways which are a part of the national system of interstate and defense highways (as referred to in 23 U.S.C. 127) when application of this section would prevent this state from receiving federal funds for highway purposes.

History: En. 32-1123.7 by Sec. 18, Ch. 316, L. 1974; R.C.M. 1947, 32-1123.7; amd. Sec. 3, Ch. 40, L. 1981; amd. Sec. 2, Ch. 366, L. 1981; amd. Sec. 1, Ch. 392, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 40 substituted "An axle may not carry a load in excess of" and "A vehicle or combination may not have more than nine axles" for language allowing the department of highways to grant a special permit specifying highway routings in (1); inserted subsection (3).

Chapter 366 inserted subsection (2).

Chapter 392 inserted subsection (4).

Effective Dates: Section 3, Ch. 366, L. 1981, provided: "This act is effective July 1, 1981."

Section 3, Ch. 392, L. 1981, provided: "This act is effective on July 1, 1981."

61-10-108. Reduction under special circumstances. The maximum axle and axle group loads stated in 61-10-105 are subject to reasonable reduction in the discretion of the department during periods when road subgrades have been weakened by water saturation or other causes.

History: En. 32-1123.9 by Sec. 20, Ch. 316, L. 1974; R.C.M. 1947, 32-1123.9.

61-10-109. Operation without special permits prohibited. The operation of vehicles or combinations of vehicles having dimensions or weights in excess of the maximum limits specified in 61-10-101 through 61-10-108 is permitted only if authorized by special permit issued by the department of highways or its agents or the highway patrol.

History: En. 32-1123.10 by Sec. 21, Ch. 316, L. 1974; R.C.M. 1947, 32-1123.10; amd. Sec. 75, Ch. 421, L. 1979; amd. Sec. 4, Ch. 40, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "dimensions or" in first sentence; substituted "61-10-101 through 61-10-108" for "61-10-105"; deleted reference to 61-10-107 following "special permit issued".

61-10-110. Federal law. Sections 61-10-101 through 61-10-109 do not authorize, without a permit issued as provided by law, the operation of a combination of vehicles having a gross weight, axle load, or size in excess of that authorized in those sections, or the operation of a combination of vehicles on the national system of interstate and defense highways having a gross weight or size in excess of that permitted by law in this state before July 1, 1956, or by federal law or regulation in excess thereof, which is adopted. If federal law allows establishment of size and weight limits in excess of those permitted in those sections, without penalty or denial of federal funds for highway purposes, the department of highways may, by permit designating highway routing, authorize the movement on highways under its jurisdiction of vehicles or combinations of vehicles of a size or weight in excess of the limits provided for in those sections, but within the limits necessary to qualify for federal-aid highway funds.

History: En. 32-1123.11 by Sec. 22, Ch. 316, L. 1974; R.C.M. 1947, 32-1123.11.

61-10-111 through 61-10-120 reserved.

61-10-121. Permits for excess size and weight. (1) The department of highways and local authorities in their respective jurisdictions may in their discretion, upon application in writing and with good cause shown, issue a special permit in writing authorizing the applicant to operate or move a vehicle, combination of vehicles, load, object, or other thing of a size or weight exceeding the maximum specified in 61-10-101 through 61-10-110 upon a highway under the jurisdiction of and for the maintenance of which the body granting the permit is responsible. However, only the department has the discretion to issue permits for movement of a vehicle or combination of vehicles carrying built-up or reducible loads in excess of 9 feet in width or exceeding the length, height, or weight specified in 61-10-101 through 61-10-110. This permit shall be issued in the public interest. A carrier receiving this permit must have public liability and property damage insurance for the protection of the traveling public as a whole. A permit may not be issued for a period of time greater than the period for which the GVW license is valid as provided in this title, including grace periods allowed by this title. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department, purchase permits to expire with their registration. A license required by the state governs the issuance of a special permit. The department may issue oversize permits to dealers in implements of husbandry and self-propelled machinery, which may be transferred from unit to unit by the dealer, for the fee set forth in 61-10-124. These oversize permits may not restrict dealers in implements of husbandry and self-propelled machinery from traveling on a Saturday or Sunday. These oversize permits expire on December 31 of each year, with no grace period. For the purposes of this section, a dealer in implements of husbandry or self-propelled machinery must be a resident of the state. A post-office box number is not a permanent address under this section.

(2) The applicant for a special permit shall specifically describe the powered vehicle or towing vehicle and generally describe the type of vehicle, combination of vehicles, load, object, or other thing to be operated or moved and the particular state highways over which the vehicle, combination of

vehicles, load, object, or other thing is to be moved and whether the permit is required for a single trip or for continuous operation.

History: En. 32-1127.1 by Sec. 27, Ch. 316, L. 1974; R.C.M. 1947, 32-1127.1; amd. Sec. 76, Ch. 421, L. 1979; amd. Sec. 1, Ch. 595, L. 1979.

61-10-122. Discretion of issuer — conditions. The department or local authority may issue or withhold a special permit at its discretion or, if the permit is issued, limit the number of trips or establish seasonal or other time limitations within which the vehicle, combination of vehicles, load, object, or other thing described may be operated on the public highways indicated, or otherwise limit or prescribe conditions of operation of the vehicle, combination of vehicles, load, object, or other thing when necessary to assure against damage to the road foundation, surfaces, or structures or safety of traffic, and may require an undertaking or other security considered necessary to compensate for injury to a roadway or road structure. During harvest no permit may be denied to oversize harvest or harvest-related agricultural machinery solely on the grounds that the travel takes place on a Saturday or Sunday. No permit may be denied to dealers in implements of husbandry and self-propelled machinery solely on the grounds that the travel may take place on a Saturday or Sunday.

History: En. 32-1127.2 by Sec. 28, Ch. 316, L. 1974; R.C.M. 1947, 32-1127.2; amd. Sec. 2, Ch. 595, L. 1979.

61-10-123. Haystack movers. A self-propelled vehicle used only for the purpose of moving haystacks on a commercial basis is subject to 61-10-121 through 61-10-127, except as follows:

(1) The vehicle, loaded or unloaded, may not exceed 55 feet in length or 20 feet in width.

(2) A single load may not be moved on the vehicle a distance greater than 75 miles from the point of origin on public roads.

(3) When the vehicle is hauling a load, it shall be accompanied by two pilot cars. Each car shall be equipped with a flashing warning light, a red flag, and a sign with the words "wide load" written on it. One car shall precede the vehicle by not less than 100 yards or more than one-fourth mile, and one shall follow the vehicle at a distance not less than 100 yards or more than one-fourth mile. The following pilot car shall be in radio contact with the vehicle at all times.

(4) The speed of the vehicle shall be reasonable and proper but not in excess of 35 miles per hour.

(5) The vehicle shall be operated only between the hours of sunrise and sunset.

(6) The vehicle may not be operated on an interstate or controlled-access highway.

(7) A term or blanket permit may be issued for the vehicle.

History: En. 32-1127.4 by Sec. 30, Ch. 316, L. 1974; R.C.M. 1947, 32-1127.4.

61-10-124. Special permits — fee. (1) Except as provided in subsection (2)(b), in addition to the regular registration and gross vehicle weight fees, a fee of $10 for each trip permit and a fee of $75 for each term permit issued for size and weight in excess of that specified in 61-10-101 through

61-10-110 shall be paid for all movements under special permits on the public highways under the jurisdiction of the department.

(2) (a) Except as provided in subsection (2)(b), term or blanket permits may not be issued for an overwidth vehicle, combination of vehicles, load, or other thing in excess of 15 feet; an overlength vehicle, combination of vehicles, load, object, or other thing in excess of 85 feet; and an overheight vehicle, combination of vehicles, load, or other thing in excess of 13 ½ feet, or of a limit determined by the department. A vehicle, combination of vehicles, load, or other thing in excess of these dimensions is limited to trip permits.

(b) A term permit may be issued to a dealer in implements of husbandry and self-propelled machinery for an overwidth or overlength vehicle referred to in subsection (2)(a). The fee for this permit is $75. This permit covers a period of 1 year and expires on December 31 of each year with no grace period.

(3) Except as provided in subsection (2)(b), a permit may not be issued for a period of time greater than the period for which the GVW license is valid as provided in this title, including grace periods allowed by this title. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department, purchase permits to expire with their registration. A license required by the state governs the issuance of a special permit.

History: En. 32-1127.3, 32-1127.5 by Secs. 29, 31, Ch. 316, L. 1974; R.C.M. 1947, 32-1127.3, 32-1127.5(part); amd. Sec. 77, Ch. 421, L. 1979; amd. Sec. 3, Ch. 595, L. 1979; amd. Sec. 5, Ch. 40, L. 1981.

Compiler's Comments

1981 Amendment: Increased the trip permit fee from $6 to $10 and inserted the $75 fee for term permits.

61-10-125. Other fees. In addition to the permit fee, there shall be charged for single trip permits, for the excess load over the gross allowable load or the sum of the excess axle loads, whichever is greater:

(1) $10 for distances to and including 100 miles;
(2) $30 for distances from 101 to 199 miles; and
(3) $50 for distances over 200 miles traveled.

History: En. 32-1127.5 by Sec. 31, Ch. 316, L. 1974; R.C.M. 1947, 32-1127.5(part); amd. Sec. 6, Ch. 40, L. 1981.

Compiler's Comments

1981 Amendment: Increased the fee in (1) from $5 to $10, in (2) from $15 to $30, and in (3) from $25 to $50.

61-10-126. Deposit of fees. All fees collected under 61-10-101 through 61-10-125 shall be forwarded to the state treasurer for deposit in the state highway account in the earmarked revenue fund.

History: En. 32-1127.10 by Sec. 36, Ch. 316, L. 1974; R.C.M. 1947, 32-1127.10.

61-10-127. Permits issued to governmental entities. Permits issued to the United States government, states, counties, cities, and their political subdivisions shall be issued without fee for a term beginning with the date of issuance and expiring December 31.

History: En. 32-1127.6 by Sec. 32, Ch. 316, L. 1974; R.C.M. 1947, 32-1127.6.

61-10-128. When authorities may restrict right to use roadway. (1) A local authority may not alter the limitations provided in 61-10-101 through 61-10-110 or substitute other limitations or requirements, except as provided in this section.

(2) The department by order, or a local road authority by ordinance or resolution, may prohibit the operation of or impose restrictions on the weight and speed of a vehicle traveling on a public highway under its respective jurisdiction and for which it is responsible for maintenance whenever the highway will be seriously damaged or destroyed by deterioration, rain, snow, or other climatic conditions, unless the use of vehicles on the highway is prohibited or the permissible vehicle weights and speed are reduced. The department or the authority which enacts the ordinance or resolution shall erect signs designating the department's order or the authority's ordinance or resolution at each end of that portion of the highway affected, and the order or ordinance or resolution is not effective until the signs are erected. The department, or the authority by ordinance or resolution, may prohibit the operation of trucks or other commercial vehicles, or impose limitations on their weight on designated highways. These prohibitions and limitations shall be designated by appropriate signs placed on the highways.

History: **(1)En. 32-1123.12 by Sec. 23, Ch. 316, L. 1974; Sec. 32-1123.12, R.C.M. 1947; (2)En. Sec. 7, Ch. 171, L. 1931; re-en. Sec. 1751.7, R.C.M. 1935; amd. Sec. 6, Ch. 184, L. 1939; amd. Sec. 37, Ch. 316, L. 1974; Sec. 32-1128, R.C.M. 1947; R.C.M. 1947, 32-1123.12, 32-1128; amd. Sec. 1, Ch. 57, L. 1981.**

Compiler's Comments

1981 Amendment: Inserted "and speed" following "weight" in first sentence of (2).

61-10-129 through 61-10-140 reserved.

61-10-141. Officers authorized to weigh vehicles and require removal of excessive loads. (1) A peace officer, officer of the highway patrol, or employee of the department may weigh any vehicle regulated by 61-10-101 through 61-10-110, either by means of portable or stationary scales, and may require that the vehicle be driven to the nearest scales if those scales are within 2 miles. That person may then require the driver to unload immediately that portion of the load necessary to decrease the weight of the vehicle to conform to the maximum allowable weights specified in 61-10-101 through 61-10-110.

(2) Commodities and material unloaded as required by this section shall be cared for and removed from the highway right-of-way by the owner or operator of the vehicle at the risk of that owner or operator. The removal shall be within a reasonable time designated by the person who has compelled the unloading.

(3) The department may establish, maintain, and operate weigh stations, either intermittently or on a continuous schedule, and may require vehicles, except passenger cars and pickup trucks under 8,000 pounds G.V.W., to enter for the purpose of weighing and inspection for compliance with all laws pertaining to their operation and safety requirements.

(4) In addition to other enforcement duties assigned under this section, an employee of the department has the same authority to enforce provisions of the motor carriers law as that granted the public service commission under

69-12-203. This section does not relieve the public service commission from its responsibility as the lead agency as required in 69-12-201 through 69-12-203 and 69-12-205. The commission, highway patrol, and the department shall cooperate to assure minimum duplication and maximum coordination of enforcement effort.

History: En. Sec. 5, Ch. 171, L. 1931; re-en. Sec. 1751.5, R.C.M. 1935; amd. Sec. 4, Ch. 184, L. 1939; amd. Sec. 4, Ch. 243, L. 1961; amd. Sec. 1, Ch. 321, L. 1971; amd. Sec. 26, Ch. 316, L. 1974; amd. Sec. 3, Ch. 280, L. 1977; R.C.M. 1947, 32-1126(1) thru (4); amd. Sec. 2, Ch. 226, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "licensing" after "motor carriers" in (4).

61-10-142. Display of permit. A special permit issued under 61-10-121 shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any peace officer, officer of the highway patrol, or employee of the department.

History: En. 32-1127.8 by Sec. 34, Ch. 316, L. 1974; R.C.M. 1947, 32-1127.8.

61-10-143. Confiscation — action by commission. A peace officer, officer of the highway patrol, or employee of the department who finds a person operating a vehicle, combination of vehicles, load, object, or other thing in violation of the conditions of a special permit may confiscate the permit and forward it to the commission. The commission may return it to the permittee or revoke, cancel, or suspend it without refund. The commission shall keep a record of all action taken upon confiscated permits, and if a permit is returned to the permittee, the action taken by the commission shall be endorsed on it. A permittee whose permit is suspended or revoked may, upon request, receive a hearing before the commission or person designated by the commission. The commission, after the hearing, may reinstate the permit or revise its previous action.

History: En. 32-1127.9 by Sec. 35, Ch. 316, L. 1974; R.C.M. 1947, 32-1127.9.

61-10-144. Violation of standards — seven percent allowance. (1) It is a misdemeanor for a person, firm, or corporation to violate any provision of 61-10-101 through 61-10-110.

(2) However, the operator of a vehicle or combination of vehicles may move over the highways to the first open state scale, permanent or portable, without incurring the excess weight penalties set forth in 61-10-145 if the total gross weight of the vehicle or combination of vehicles does not exceed allowable weight limitations by more than 7%. In the event the vehicle or combination of vehicles is not in excess of the allowable weight limitations by more than 7%, the department may issue a single trip permit for the fee of $10 for allowing said vehicle or combination of vehicles to move over the highways to the first facility where its load can be safely adjusted or to its destination. Violations in excess of 7% are subject to the fines provided in 61-10-145, and all loads in excess of 7% must be adjusted or reduced to conform to the size and weight limitations before the vehicle or combination of vehicles is moved from the point of weighing.

(3) An operator of a vehicle or combination of vehicles subject to the provisions of 61-10-107(2) may move over a highway, except any highway which is part of the federal-aid interstate system, within a 50-mile radius of

the harvested field to the point of first unloading, without incurring the excess weight penalties set forth in 61-10-145 if the total gross weight of the vehicle or combination of vehicles does not exceed allowable weight limitations by more than 20% per axle but the maximum load per inch of tire width may not exceed 670 pounds. The vehicle or combination of vehicles may not exceed 40 miles per hour. No single trip permit as required in subsection (2) shall be applicable to such vehicle or combination of vehicles. When such vehicle or combination of vehicles violates any of the provisions of this subsection, the fine or penalty imposed shall apply to that portion of the load above the legal limit.

History: En. Sec. 3(a), Ch. 123, L. 1947; amd. Sec. 2, Ch. 243, L. 1961; amd. Sec. 24, Ch. 316, L. 1974; amd. Sec. 1, Ch. 239, L. 1977; R.C.M. 1947, 32-1124; amd. Sec. 2, Ch. 392, L. 1981.

Compiler's Comments

1981 Amendment: Substituted the language in subsection (3) for "The operator of a vehicle who has received a permit for the movement of agricultural products during harvest season under 61-10-107 is exempt from the single trip permit fee of $10 charged under subsection (2)."

Effective Date: Section 3, Ch. 392, L. 1981, provided: "This act is effective on July 1, 1981."

61-10-145. Penalties — disposition of fines. (1) A person, firm, or corporation convicted of violating 61-10-101 through 61-10-110 shall be punished by a fine of not less than $15 or more than $50. A person, firm, or corporation convicted of operating a motor vehicle upon the public highways of this state with weight upon a wheel, axle, or group of axles greater than the maximum permitted by 61-10-101 through 61-10-110 shall be fined, in addition to other penalties provided by law for the offense, the following amounts:

(a) $15 for any excess weight up to and including 2,000 pounds;

(b) $25 for any excess weight more than 2,000 pounds and less than 4,001 pounds;

(c) $35 for any excess weight more than 4,000 pounds and less than 6,001 pounds;

(d) $50 for any excess weight more than 6,000 pounds and less than 8,001 pounds;

(e) $80 for any excess weight more than 8,000 pounds and less than 10,001 pounds;

(f) $110 for any excess weight more than 10,000 pounds and less than 12,001 pounds;

(g) $150 for any excess weight more than 12,000 pounds and less than 14,001 pounds;

(h) $200 for any excess weight more than 14,000 pounds and less than 16,001 pounds;

(i) $250 for any excess weight more than 16,000 pounds and less than 18,001 pounds;

(j) $300 for any excess weight more than 18,000 pounds and less than 20,001 pounds;

(k) $500 for any excess weight more than 20,000 pounds and less than 25,001 pounds;

(l) $1,000 for any excess weight more than 25,000 pounds.

(2) A complaint filed and a summons or notice to appear issued pertaining to a violation of the gross weight regulations in 61-10-101 through

61-10-110 shall specify the amount of the overweight which the defendant is alleged to have had upon the vehicle or combination of vehicles.

(3) It is a misdemeanor, punishable as provided in 46-18-212, for any person, firm, or corporation to violate any of the provisions of 61-10-123, 61-10-141, or 61-10-142.

(4) All fines and forfeitures shall be remitted monthly by the county treasurer to the state treasurer for deposit in the state general fund.

History: En. Sec. 3(b), Ch. 123, L. 1947; amd. Sec. 3, Ch. 243, L. 1961; amd. Sec. 25, Ch. 316, L. 1974; R.C.M. 1947, 32-1125; amd. Sec. 78, Ch. 421, L. 1979; amd. Sec. 1, Ch. 100, L. 1981.

Compiler's Comments

1981 Amendment: Deleted term of imprisonment for violating 61-10-101 through 61-10-110 in (1); added subsection (3).

61-10-146. Special permits — misrepresentations and violations as misdemeanor. A person who knowingly and willfully misrepresents the size or weight of a vehicle, combination of vehicles, load, object, or other thing in obtaining a special permit or who does not follow the requirements and conditions of the special permit or who operates a vehicle, combination of vehicles, load, object, or other thing the size or weight of which requires a special permit without first obtaining a special permit is guilty of a misdemeanor.

History: En. 32-1127.7 by Sec. 33, Ch. 316, L. 1974; R.C.M. 1947, 32-1127.7; amd. Sec. 79, Ch. 421, L. 1979.

61-10-147. Penalties for using highway when use is restricted. (1) It is a misdemeanor for a person, firm, or corporation to violate any of the provisions of 61-10-128(2).

(2) A person, firm, or corporation first convicted of a misdemeanor for a violation of any of the provisions of 61-10-128(2) shall be punished by a fine of not less than $10 or more than $50 or by imprisonment in the county or municipal jail for not less than 5 days or more than 25 days. For a second conviction within 1 year the person, firm, or corporation shall be punished by a fine of not less than $50 or more than $200 or by imprisonment in the county or municipal jail for not less than 25 days or more than 100 days or by both this fine and imprisonment. Upon a third or subsequent conviction within 1 year after the first conviction the person, firm, or corporation shall be punished by a fine of not less than $200 or more than $500 or by imprisonment in the county or municipal jail for not less than 100 days or more than 6 months or by both this fine and imprisonment.

History: En. Sec. 9, Ch. 171, L. 1931; re-en. Sec. 1751.9, R.C.M. 1935; amd. Sec. 7, Ch. 184, L. 1939; amd. Sec. 38, Ch. 316, L. 1974; R.C.M. 1947, 32-1130.

61-10-148. Disposition of fines. Except as provided in 61-12-701, fines collected under 61-10-146 or 61-10-147 belong to the general road fund of the county and shall, immediately after their collection, be paid by the court or magistrate collecting them to the county treasurer for the use and benefit of that fund, except for that portion of the fines otherwise allocated by law which the county treasurer shall transmit to the state treasurer who shall credit them to the appropriate account in the earmarked revenue fund.

History: En. Sec. 1, Ch. 10, Ch. 72, L. 1913; re-en. Sec. 1, Ch. 10, Ch. 141, L. 1915; re-en. Sec. 1752, R.C.M. 1921; re-en. Sec. 1752, R.C.M. 1935; amd. Sec. 12, Ch. 226, L. 1965; amd. Sec. 11, Ch. 214, L. 1969; R.C.M. 1947, 32-1131; amd. Sec. 80, Ch. 421, L. 1979.

Part 2

Gross Vehicle Weight Licensing Requirements

61-10-201. Gross weight fees on motortrucks and truck tractors. In addition to other fees for the licensing of vehicles, there shall be paid and collected annually for each truck and truck tractor, based upon the maximum gross loaded weight thereof as set by the licensee in his application, the following fees:

Schedule I

Up to 6,000 lbs.	$ 7.50
6,001 through 8,000 lbs.	12.50
8,001 through 10,000 lbs.	17.50
10,001 through 12,000 lbs.	20.00
12,001 through 14,000 lbs.	22.50
14,001 through 16,000 lbs.	27.50
16,001 through 18,000 lbs.	37.50
18,001 through 20,000 lbs.	50.00
20,001 through 22,000 lbs.	62.50
22,001 through 24,000 lbs.	93.75
24,001 through 26,000 lbs.	125.00
26,001 through 28,000 lbs.	156.25
28,001 through 30,000 lbs.	206.25
30,001 through 32,000 lbs.	262.50
32,001 through 34,000 lbs.	318.75
34,001 through 36,000 lbs.	375.00
36,001 through 38,000 lbs.	431.25
38,001 through 40,000 lbs.	487.50
40,001 through 42,000 lbs.	543.75
Over 42,000 lbs. and within the weight limits specified in 61-10-101 through 61-10-110	62.50 per ton or fraction thereof.

History: Ap. p. Sec. 6-201, Ch. 197, L. 1965; amd. Sec. 2, Ch. 2, Ex. L. 1967; Sec. 32-3301, R.C.M. 1947; Ap. p. Sec. 6-203, Ch. 197, L. 1965; amd. Sec. 4, Ch. 2, Ex. L. 1967; amd. Sec. 113, Ch. 316, L. 1974; Sec. 32-3303, R.C.M. 1947; R.C.M. 1947, 32-3301, 32-3303; amd. Sec. 81, Ch. 421, L. 1979.

61-10-202. Gross weight fees on trailers and semitrailers. In addition to other fees for the licensing of vehicles, there shall be paid and collected annually for each trailer and semitrailer, based upon the maximum gross loaded weight thereof as set by the licensee in his application, except as otherwise provided, the following fees:

Schedule II
Trailers Other Than Housetrailers

Up to 2,500 lbs. for personal use—	Exempt
Up to 2,500 lbs. for commercial use	$ 3.75
2,501 through 6,000 lbs.	5.00
6,001 through 8,000 lbs.	15.00

8,001 through 10,000 lbs.	17.50
10,001 through 12,000 lbs.	20.00
12,001 through 14,000 lbs.	22.50
14,001 through 16,000 lbs.	27.50
16,001 through 18,000 lbs.	37.50
18,001 through 20,000 lbs.	50.00
20,001 through 22,000 lbs.	62.50
22,001 through 24,000 lbs.	93.75
24,001 through 26,000 lbs.	125.00
26,001 through 28,000 lbs.	156.25
28,001 through 30,000 lbs.	206.25
30,001 through 32,000 lbs.	262.50
32,001 through 34,000 lbs.	318.75
34,001 through 36,000 lbs.	375.00
36,001 through 38,000 lbs.	431.25
38,001 through 40,000 lbs.	487.50
40,001 through 42,000 lbs.	543.75
Over 42,000 lbs. and within the weight limits specified in 61-10-101 through 61-10-110	62.50 per ton or fraction thereof.

History: Ap. p. Sec. 6-202, Ch. 197, L. 1965; amd. Sec. 3, Ch. 2, Ex. L. 1967; Sec. 32-3302, R.C.M. 1947; Ap. p. Sec. 6-203, Ch. 197, L. 1965; amd. Sec. 4, Ch. 2, Ex. L. 1967; amd. Sec. 113, Ch. 316, L. 1974; Sec. 32-3303, R.C.M. 1947; R.C.M. 1947, 32-3302, 32-3303; amd. Sec. 82, Ch. 421, L. 1979.

61-10-203. Alternative gross weight fees on truck trailer combinations. (1) In addition to other fees for the licensing of vehicles, there may be paid and collected annually instead of the fees provided in 61-10-201, for each motortruck or truck tractor, based upon the maximum combined gross loaded weight of a truck tractor with a semitrailer, a truck tractor with a semitrailer and a full trailer, a motortruck and a trailer, or a motortruck and trailers, as set by the licensee in his application, the following fees:

Schedule III

Truck tractor with a semitrailer, a truck tractor with a semitrailer and a full trailer, a motortruck and a trailer, or a motortruck and trailers:

Up to 42,000 lbs	$ 571.00
42,001 to 44,000 lbs	631.00
44,001 to 46,000 lbs	691.00
46,001 to 48,000 lbs	752.00
48,001 to 50,000 lbs	812.00
50,001 to 52,000 lbs	871.00
52,001 to 54,000 lbs	931.00
54,001 to 56,000 lbs	992.00
56,001 to 58,000 lbs	1,052.00
58,001 to 60,000 lbs	1,112.00
60,001 to 62,000 lbs	1,172.00
62,001 to 64,000 lbs	1,233.00
64,001 to 66,000 lbs	1,293.00
66,001 to 68,000 lbs	1,352.00

68,001 to 70,000 lbs	1,412.00
70,001 to 72,000 lbs	1,473.00
72,001 to 74,000 lbs	1,533.00
74,001 to 76,000 lbs	1,593.00
76,001 to 78,000 lbs	1,653.00
78,001 and over	65.50 per ton or fraction thereof.

(2) Payment of the fees provided in this section exempts a semitrailer or trailer in combination with a motortruck or truck tractor so licensed from the fees provided in 61-3-701, 61-10-202, 61-10-210, and 61-10-211.

(3) The trailers or semitrailers must be currently registered in another state or county.

(4) A trailer or semitrailer entering the state in combination with a truck or truck tractor licensed under the above schedule may be moved in the local delivery zone in combination with a truck or truck tractor, licensed under 61-10-201, without payment of any additional fees on the truck or truck tractor, trailer, or semitrailer.

(5) A permit must be obtained from the department of highways before the truck tractor is used in local service and the permit is continuous and issued at no fee. The permit shall not be issued until proof of payment of fees under Schedule III has been established.

History: **En. Sec. 7, Ch. 2, Ex. L. 1967; amd. Sec. 1, Ch. 212, L. 1971; amd. Sec. 112, Ch. 316, L. 1974; R.C.M. 1947, 32-3302.1.**

61-10-204. Special fees — pole trailers, lowboys, and livestock. There shall be paid and collected annually a fee equal to 75% of the fees provided in Schedule I and Schedule II above on pole trailers; trucks, truck tractors, trailers, and semitrailers used exclusively in hauling livestock and logs; truck tractors and lowboy trailers used exclusively in hauling equipment; and truck tractors drawing or hauling said lowboy trailers.

History: **En. Sec. 6-204, Ch. 197, L. 1965; amd. Sec. 1, Ch. 187, L. 1969; R.C.M. 1947, 32-3304.**

61-10-205. Special fees — haulers of ready-mix concrete. There shall be paid and collected annually a fee equal to 55% of the fees provided in Schedule I and Schedule II, as provided in 61-10-201 and 61-10-202, on concrete mixer trucks, concrete mixer trailers, and concrete mixer semitrailers used exclusively for hauling ready-mix or ready-to-pour concrete and truck tractors used exclusively in hauling concrete mixer semitrailers.

History: **En. 32-3304.1 by Sec. 2, Ch. 187, L. 1969; amd. Sec. 1, Ch. 102, L. 1971; R.C.M. 1947, 32-3304.1.**

61-10-206. Special fees — certain farm vehicles. Except for motortrucks owned and operated by cooperative associations or cooperative marketing associations, there shall be paid and collected annually a fee equal to 16% of the fees provided in Schedule I and Schedule II above on motortrucks, trailers, and semitrailers owned and operated by ranchers or farmers in the transportation of their own ranch, farm, orchard, or dairy products from point of production to market, or of supplies, commodities, or equipment to be used on the ranch, farm, orchard, or dairy, or in the infrequent or seasonal transportation by one farmer for another for any purpose other than commercial hire of products of the farm, orchard, or dairy, or of supplies or commodities to be used on the farm, orchard, or dairy, and on one truck tractor and lowboy trailer used by contractors engaged exclusively in soil conservation work and land leveling activities that result in direct benefit to agriculture. However, the minimum fee so paid shall be $6. The terms "trailers and semitrailers" as used herein shall not include farm wagons.

History: En. Sec. 6-206, Ch. 197, L. 1965; amd. Sec. 1, Ch. 143, L. 1967; amd. Sec. 6, Ch. 2, Ex. L. 1967; R.C.M. 1947, 32-3306.

61-10-207. Special fees — buses. There shall be paid and collected annually for each bus or auto stage with the exception of school buses a fee of $7 per seat, exclusive of the first seven seats and the operator, for the maximum adult seating capacity thereof, except that motor vehicles which are regularly used to haul freight and passengers shall be taxed upon the basis of the gross weight schedule established in 61-10-201. School buses shall not be exempt if they enter charter service.

History: En. Sec. 6-207, Ch. 197, L. 1965; R.C.M. 1947, 32-3307.

61-10-208. Special fees — housetrailers. In addition to other fees for the licensing of vehicles, there shall be paid and collected annually for each housetrailer, based upon overall length of body as set by the licensee in his application, except as otherwise provided, a fee equal to 75 cents for each foot of overall trailer body length exclusive of bumpers and hitch.

History: En. Sec. 6-205, Ch. 197, L. 1965; amd. Sec. 5, Ch. 2, Ex. L. 1967; R.C.M. 1947, 32-3305.

61-10-209. Monthly payment — quarterly payment — penalty for failure to pay fee. (1) When the gross weight of a vehicle exceeds 24,000 pounds, the gross weight or special fees for trucks, trailers, tractors, pole trailers, or semitrailers may be paid for a 1-month period for one-twelfth the regular fee or for a 3-month period for one-fourth the regular fee at the beginning of any quarter of the calendar year. For each fee so paid other than at the time of payment of the annual vehicle registration fee, an additional fee of $5 shall be charged. The department may adopt rules relative to the issuance and display of certificates or insignia, which shall state the months for which the vehicle is licensed.

(2) A vehicle licensed under this section may not be operated over the public highways after the expiration of:

(a) the 1-month period until the owner pays the required fee for a license for an additional 1-month or 3-month period or for the remainder of the year; or

(b) the 3-month period unless the owner or operator of the vehicle, within 10 calendar days or 7 business days as provided by law, whichever is greater, pays the required fee for a license for an additional 1-month or 3-month period or for the remainder of the year.

(3) A person who operates a vehicle upon the public highways in violation of subsection (2) is guilty of a misdemeanor. In addition he shall be required to purchase a gross weight license for the vehicle involved at the fee covering an entire year's license for operation of the vehicle less the fees for the period of the year already paid.

(4) If within 5 days thereafter no license for a full year has been purchased as required, the Montana highway patrol, county sheriff, or city police

may impound the vehicle in the manner which is directed for these cases by the division of motor vehicles until the requirement is met.

History: (1)En. Sec. 6-208, Ch. 197, L. 1965; amd. Sec. 114, Ch. 316, L. 1974; Sec. 32-3308, R.C.M. 1947; (2) thru (4)En. Sec. 6-209, Ch. 197, L. 1965; amd. Sec. 2, Ch. 292, L. 1967; amd. Sec. 115, Ch. 316, L. 1974; Sec. 32-3309, R.C.M. 1947; R.C.M. 1947, 32-3308, 32-3309; amd. Sec. 83, Ch. 421, L. 1979; amd. Sec. 1, Ch. 187, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "a 1-month period for one-twelfth the regular fee or for" before "a 3-month period" in (1); increased the additional fee in (1) from $1 to $5; substituted "months" for "quarters" near the end of (1); divided former subsection (2) into subsections (2), (2)(b), and (3); added subsection (2)(a); inserted "1-month or" before "3-month period" at the end of (2)(b); substituted "in violation of subsection (2)" for a several-day time limit in (3).

61-10-210. Three unit combination — fees in lieu of gross weight fees — marking. (1) Instead of the gross weight fees provided in 61-10-201 through 61-10-209, the owner of a motortruck or truck tractor used on the highways of the state in connection with two trailers or semitrailers at the same time shall register them as a three unit combination in the following manner by:

(a) paying the registration and other fees covering the maximum practical gross vehicle weight for the truck or truck tractor, but not less than the actual operating gross weight under 61-3-303, 61-3-321, and 61-10-201;

(b) registering the trailers in accordance with 61-3-303 and 61-3-321 and paying the gross vehicle weight fee prescribed for the maximum trailing load in accordance with 61-10-202 on the combined gross weight of the two trailers or semitrailers, treating them as if they were a single unit.

(2) This section does not authorize axle loads in excess to those established by 61-10-101 through 61-10-110.

History: En. Sec. 6-210, Ch. 197, L. 1965; amd. Sec. 116, Ch. 316, L. 1974; R.C.M. 1947, 32-3310.

61-10-211. Fees on motortrucks, truck tractors, trailers, and semitrailers from other states. (1) In lieu of other fees for the licensing of vehicles, there shall be collected a fee for each motortruck, truck tractor, trailer, and semitrailer already licensed for the year in another jurisdiction and operated upon an itinerant basis in this state. The fee shall be collected upon each entrance of such vehicle into the state, and shall be based upon the number of miles to be traveled in the state as shown in the application of the nonresident operator.

(2) The fee shall be collected for any single vehicle. When any combination of truck, truck tractor, semitrailer, or trailer totals more than 6,000 pounds gross weight, the fee shall be collected for each unit in the combination.

(3) The fee shall be:

(a) $10 for each trip of 200 miles or less;

(b) $15 for each trip of over 200 miles to 400 miles;

(c) $20 for each trip of over 400 miles.

(4) Such fees shall not apply to any trailer the principal use of which is as temporary or permanent living quarters, or to any vehicle of a carnival which is under contract with a state, county, or district fair association.

History: En. Sec. 6-212, Ch. 197, L. 1965; R.C.M. 1947, 32-3312; amd. Sec. 7, Ch. 40, L. 1981.

Compiler's Comments

1981 Amendment: Increased the fee in (3)(a) from $5 to $10, in (3)(b) from $7.50 to $15, and in (3)(c) from $10 to $20.

61-10-212. Temporary trip permits showing payment of fees — display. (1) Temporary trip permits showing payment of the fees provided for in 61-10-211 shall be issued under rules prescribed by the department. The permit shall be displayed in the vehicle for which the fee has been paid at all times while the vehicle is being operated on the highways of this state by posting it where it may be read.

(2) The department may limit the operation of the vehicle in this state to a definite period of time.

History: En. Sec. 6-213, Ch. 197, L. 1965; amd. Sec. 117, Ch. 316, L. 1974; R.C.M. 1947, 32-3313.

61-10-213. Time for payment of fees by nonresidents — disposition. A nonresident owner or operator of a motortruck, truck tractor, trailer, or semitrailer shall, immediately upon arrival in the state, contact the nearest highway patrol office, any department office, the county sheriff, or the county treasurer's office to pay the fee and secure the permit prescribed. All fees collected shall immediately be remitted to the county treasurer.

History: En. Sec. 6-214, Ch. 197, L. 1965; amd. Sec. 118, Ch. 316, L. 1974; R.C.M. 1947, 32-3314.

61-10-214. Exemptions. (1) Motor vehicles operating exclusively for transportation of persons for hire within the limits of incorporated cities or towns and within 15 miles from such limits are exempt from this part.

(2) Motor vehicles brought or driven into Montana by a nonresident, migratory, bona fide agricultural worker temporarily employed in agricultural work in this state where those motor vehicles are used exclusively for transportation of agricultural workers are exempt from this part.

(3) Vehicles lawfully displaying a licensed dealer's plate as provided in 61-4-103 are exempt from this part when moving to or from a dealer's place of business when unloaded or loaded with dealer's property only or while being demonstrated in the course of the dealer's business, for a period not to exceed 7 days. Vehicles being demonstrated may not be leased, rented, or operated for compensation by the licensed dealer.

History: En. Sec. 12, Ch. 219, L. 1951; amd. Sec. 1, Ch. 262, L. 1967; amd. Sec. 1, Ch. 46, L. 1973; Sec. 53-626, R.C.M. 1947; amd. and redes. 32-3319 by Sec. 183, Ch. 316, L. 1974; R.C.M. 1947, 32-3319(part); amd. Sec. 84, Ch. 421, L. 1979; amd. Sec. 3, Ch. 39, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "and in the case of vehicles having a gross loaded weight of less than 24,000 pounds" following "dealer's property only" in first sentence of (3); added the last phrase in (3) beginning "for a period . . .".

61-10-215. Additional tax by municipalities prohibited — exceptions. Municipalities shall not levy, assess, collect, or charge any additional tax upon any carrier of persons or property for hire, except as provided by law. However, no carrier shall be exempt hereby from paying a parking, curb, or ad valorem property tax levied by any municipality.

History: En. Sec. 6-106, Ch. 197, L. 1965; R.C.M. 1947, 32-3206.

61-10-216 through 61-10-220 reserved.

61-10-221. Purpose of fees. The fees provided in this part are in consideration of the right to use the highways of the state of Montana.

History: En. Sec. 13, Ch. 219, L. 1951; Sec. 53-627, R.C.M. 1947; amd. and redes. 32-3320 by Sec. 184, Ch. 316, L. 1974; R.C.M. 1947, 32-3320(part).

61-10-222. Time for payment of fees. (1) Prior to or at the time of registration of the vehicle as required under chapter 3 or chapter 4 or prior to the operation of the vehicle on the public highways, fees provided in this part shall be paid in the full amount unless otherwise provided by law. With respect to vehicles operating on the highways with a current rear windshield sticker issued under the provisions of 61-4-111 or 61-4-112, the fees provided in this part shall be due and payable at the time of registration.

(2) A person who makes application for a GVW license after July 1 of any year shall pay one-half of the fees provided in this part.

(3) When a person makes application for registration required under chapter 3 for a period of time other than the calendar year, the fees provided in this part shall be computed for the registration period at one-twelfth of the applicable fee for each month or part of month in the registration period.

History: En. Sec. 6-101, Ch. 197, L. 1965; amd. Sec. 1, Ch. 292, L. 1967; amd. Sec. 1, Ch. 47, L. 1973; amd. Sec. 109, Ch. 316, L. 1974; amd. Sec. 14, Ch. 74, L. 1975; R.C.M. 1947, 32-3201; amd. Sec. 85, Ch. 421, L. 1979.

61-10-223. Expiration date. Any GVW license issued shall be valid only for the period for which issued.

History: En. Sec. 6-102, Ch. 197, L. 1965; R.C.M. 1947, 32-3202; amd. Sec. 86, Ch. 421, L. 1979.

61-10-224. GVW license transferable. The GVW license issued hereunder is transferable by the licensee of a truck, truck tractor, trailer, semitrailer, lowboy trailer, pole trailer, housetrailer, or passenger car to a replacement vehicle of the same type. This gross vehicle weight license transfer may take place without the licensee transferring ownership of the first vehicle. If the transfer is to a smaller vehicle, there shall be no refund.

History: En. Sec. 6-103, Ch. 197, L. 1965; amd. Sec. 4, Ch. 127, L. 1969; R.C.M. 1947, 32-3203; amd. Sec. 2, Ch. 415, L. 1979; amd. Sec. 87, Ch. 421, L. 1979.

61-10-225. Disposition of fees collected by county treasurer. At the time of collecting the fees provided for in 61-10-222, each county treasurer shall retain 5% of the fees collected by him for the cost of administration and for deposit in the general fund of the county. The remaining 95% shall be remitted monthly to the state treasurer for deposit to the credit of the department of highways. The remittance shall be made on forms furnished to the county treasurer by the department.

History: En. Sec. 6-104, Ch. 197, L. 1965; amd. Sec. 1, Ch. 293, L. 1967; amd. Sec. 110, Ch. 316, L. 1974; R.C.M. 1947, 32-3204.

61-10-226. Deposit of state highway money. (1) Any reference to the state highway fund means the state highway account in the earmarked revenue fund.

(2) Money received for the use of the department from the receipt or transfer of GVW license fees, as provided by law, or from other state sources shall be deposited in the earmarked revenue fund to the credit of the department.

(3) Money received from the federal government or other agencies shall be deposited in the federal and private revenue fund to the credit of the department.

(4) Money collected for the department as authorized by law shall be credited to such fund or funds by the state treasurer.

(5) Money received from the counties shall be deposited in the earmarked revenue fund to the credit of the department.

History: En. Sec. 6-105, Ch. 197, L. 1965; amd. Sec. 111, Ch. 316, L. 1974; R.C.M. 1947, 32-3205; amd. Sec. 88, Ch. 421, L. 1979; amd. Sec. 1, Ch. 48, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "from the counties" in subsection (3); added subsection (5).

61-10-227. Blank forms furnished county treasurers. The department shall furnish all county treasurers with the following:

(1) blank application forms and affidavit forms outlining and providing for the information needed in each classification of license required;

(2) GVW licenses in a form determined most suitable by the department;

(3) the other forms, stickers, certificates, or blanks the department considers necessary to carry out this part.

History: En. Sec. 6, Ch. 219, L. 1951; Sec. 53-620, R.C.M. 1947; amd. and redes. 32-3205.1 by Sec. 181, Ch. 316, L. 1974; R.C.M. 1947, 32-3205.1; amd. Sec. 89, Ch. 421, L. 1979.

61-10-228 through 61-10-230 reserved.

61-10-231. Enforcement. The highway patrol and any designated employee of the department of highways shall enforce this part and 61-3-502(1), and those persons shall examine and inspect the motor vehicles operating upon the highways in this state and regulated by this part and 61-3-502(1) to ascertain whether or not those laws are being complied with.

History: En. Sec. 10, Ch. 219, L. 1951; amd. Sec. 1, Ch. 156, L. 1955; Sec. 53-624, R.C.M. 1947; amd. and redes. 32-3318 by Sec. 182, Ch. 316, L. 1974; R.C.M. 1947, 32-3318; amd. Sec. 4, Ch. 39, L. 1981.

61-10-232. Violation — penalty. Any owner or operator of a motortruck, truck tractor, trailer, semitrailer, bus, or automobile who violates any provision of this part is guilty of a misdemeanor and shall be punished by a fine of not more than $300 or by a sentence of not more than 60 days in the county jail or both.

History: En. Sec. 6-216, Ch. 197, L. 1965; R.C.M. 1947, 32-3316.

61-10-233. Excess weight — penalties. (1) The operator is subject to the penalties stated in 61-10-232 whenever the gross loaded weight of any trucks, truck tractor, trailer, or semitrailer operated upon any highway in this state exceeds the gross vehicle weight shown on:

(a) the owner's certificate of registration and payment receipt issued under 61-3-322; or

(b) the gross vehicle weight receipt issued under 61-10-227.

(2) In addition, the operator shall immediately pay to the nearest county treasurer or to the department the difference between the fee already paid and that applicable to the gross weight of his vehicle before unloading the excess, provided that it does not exceed the legal axle weight.

History: En. Sec. 6-217, Ch. 197, L. 1965; amd. Sec. 1, Ch. 37, L. 1971; amd. Sec. 120, Ch. 316, L. 1974; R.C.M. 1947, 32-3317; amd. Sec. 90, Ch. 421, L. 1979; amd. Sec. 37, Ch. 614, L. 1981.

Compiler's Comments

1981 Amendment: Changed "tax receipt" to "payment receipt" in (1)(a).

Effective Date: Section 66, Ch. 614, L. 1981, provided: "(1) Except as provided in subsection (2), this act is effective on January 1, 1982.

(2) Section 5 [61-3-535] is effective on passage and approval." Approved May 7, 1981.

Parts 3 through 10 reserved

Part 11

Multistate Highway Transportation Agreement

Part Compiler's Comments

1981 Title: The title to Ch. 224, L. 1981 (HB 681), read: "An act adopting the Multistate Highway Transportation Agreement."

61-10-1101. Multistate Highway Transportation Agreement — enactment and text. The Multistate Highway Transportation Agreement is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

MULTISTATE HIGHWAY TRANSPORTATION AGREEMENT

Pursuant to and in conformity with the laws of their respective jurisdictions, the participating jurisdictions, acting by and through their officials lawfully authorized to execute this agreement, do mutually agree as follows:

Article I. Findings and Purposes

Section 1. **Findings.** The participating jurisdictions find that:

(a) the expanding regional economy depends on expanding transportation capacity;

(b) highway transportation is the major mode for movement of people and goods in the western states;

(c) uniform application in the West of more adequate vehicle size and weight standards will result in a reduction of pollution, congestion, fuel consumption, and related transportation costs, which are necessary to permit increased productivity;

(d) a number of western states, already having adopted substantially the 1964 bureau of public roads recommended vehicle size and weight standards, still find current federal limits more restrictive;

(e) the 1974 revision of federal law (23 U.S.C. 127) did not contain any substantial improvements for vehicle size and weight standards in the western states and deprives states of interstate matching money if vehicle weights and widths are increased, even though the interstate system is nearly 92% complete; and

(f) the participating jurisdictions are most capable of developing vehicle size and weight standards most appropriate for the regional economy and transportation requirements, consistent with and in recognition of principles of highway safety.

Section 2. **Purposes.** The purposes of this agreement are to:

(a) adhere to the principle that each participating jurisdiction should have the freedom to develop vehicle size and weight standards that it determines to be most appropriate to its economy and highway system;

(b) establish a system authorizing the operation of vehicles traveling between two or more participating jurisdictions at more adequate size and weight standards;

(c) promote uniformity among participating jurisdictions in vehicle size and weight standards on the basis of the objectives set forth in this agreement;

(d) secure uniformity, insofar as possible, of administrative procedures in the enforcement of recommended vehicle size and weight standards;

(e) provide means for the encouragement and utilization of research that will facilitate the achievement of the foregoing purposes, with due regard for the findings set forth in section 1 of this article.

Article II. Definitions

Section 1. As used in this agreement:

(a) "designated representative" means a legislator or other person authorized to represent the jurisdiction;

(b) "jurisdiction" means a state of the United States or the District of Columbia;

(c) "vehicle" means any vehicle as defined by statute to be subject to size and weight standards that operates in two or more participating jurisdictions.

Article III. General Provisions

Section 1. **Qualifications for membership.** Participation in this agreement is open to jurisdictions that subscribe to the findings, purposes, and objectives of this agreement and will seek legislation necessary to accomplish these objectives.

Section 2. **Cooperation.** The participating jurisdictions, working through their designated representatives, shall cooperate and assist each other in achieving the desired goals of this agreement pursuant to appropriate statutory authority.

Section 3. **Effect of headings.** Article and section headings contained herein may not be considered to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of any article or section hereof.

Section 4. **Vehicle laws and regulations.** This agreement does not authorize the operation of a vehicle in any participating jurisdiction contrary to the laws or regulations thereof.

Section 5. **Interpretation.** The final decision regarding interpretation of questions at issue relating to this agreement shall be reached by unanimous joint action of the participating jurisdictions, acting through the designated representatives. Results of all such actions shall be placed in writing.

Section 6. **Amendment.** This agreement may be amended by unanimous joint action of the participating jurisdictions, acting through the officials thereof authorized to enter into this agreement, subject to the requirements of section 4, Article III. Any amendment shall be placed in writing and become a part hereof.

Section 7. **Restrictions, conditions, or limitations.** Any jurisdiction entering this agreement shall provide each other participating jurisdiction with a list of any restriction, condition, or limitation on the general terms of this agreement, if any.

Section 8. **Additional jurisdictions.** Additional jurisdictions may become members of this agreement by signing and accepting the terms of the agreement.

Article IV. Cooperating Committee

Section 1. Pursuant to section 2, Article III, the designated representatives of the participating jurisdictions shall constitute a committee that shall have the power to:

(a) collect, correlate, analyze, and evaluate information resulting or derivable from research and testing activities in relation to vehicle size and weight related matters;

(b) recommend and encourage the undertaking of research and testing in any aspect of vehicle size and weight or related matter when, in their collective judgment, appropriate or sufficient research or testing has not been undertaken;

(c) recommend changes in law or policy with emphasis on compatibility of laws and uniformity of administrative rules that would promote effective governmental action or coordination in the field of vehicle size and weight related matters.

Section 2. Each participating jurisdiction shall be entitled to one vote only. No action of the committee shall be binding unless a majority of the total number of votes cast by participating jurisdictions are in favor thereof.

Section 3. The committee shall meet at least once annually and shall elect, from among its members, a chairman, a vice-chairman, and a secretary.

Section 4. The committee shall submit annually to the legislature of each participating jurisdiction, no later than November 1, a report setting forth the work of the committee during the preceding year and including recommendations developed by the committee. The committee may submit such additional reports as it considers appropriate or desirable. Copies of all such reports shall be made available to the transportation committee of the western conference, council of state governments, and to the western association of state highway and transportation officials.

Article V. Objectives of the Participating Jurisdictions

Section 1. **Objectives.** The participating jurisdictions hereby declare that:

(a) it is the objective of the participating jurisdictions to obtain more efficient and more economical transportation by motor vehicles between and among the participating jurisdictions by encouraging the adoption of standards that will, as minimums, allow the operation on all state highways, except those determined through engineering evaluation to be inadequate, with a single-axle weight not in excess of 20,000 pounds, a tandem-axle weight not in excess of 34,000 pounds, and a gross vehicle or combination weight not in excess of that resulting from application of the formula:

$$W = 500((LN/N - 1) + 12N + 36)$$

where

W = maximum weight in pounds carried on any group of two or computed to nearest 500 pounds;

L = distance in feet between the extremes of any group of two or more consecutive axles;

N = number of axles in group under consideration;

(b) it is the further objective of the participating jurisdictions that in the event the operation of a vehicle or combination of vehicles according to the provisions of subsection (a) of this section would result in withholding or forfeiture of federal-aid funds pursuant to section 127, Title 23, U.S. Code, the operation of such vehicle or combination of vehicles at axle and gross weights within the limits set forth in subsection (a) of this section will be authorized under special permit authority by each participating jurisdiction that could legally issue such permits prior to July 1, 1956, provided all regulations and procedures related to such issuance in effect as of July 1, 1956, are adhered to;

(c) the objectives of subsections (a) and (b) of this section relate to vehicles or combinations of vehicles in regular operation, and the authority of any participating jurisdiction to issue special permits for the movement of any vehicle or combinations of vehicles having dimensions and/or weights in excess of the maximum statutory limits in each participating jurisdiction will not be affected;

(d) it is the further objective of the participating jurisdictions to facilitate and expedite the operation of any vehicle or combination of vehicles between and among the participating jurisdictions under the provisions of subsection (a) or (b) of this section, and to that end the participating jurisdictions hereby agree, through their designated representatives, to meet and cooperate in the consideration of vehicle size and weight related matters including but not limited to the development of uniform enforcement procedures; additional vehicle size and weight standards; operational standards; agreements or compacts to facilitate regional application and administration of vehicle size and weight standards; uniform permit procedures; uniform application forms; rules for the operation of vehicles, including equipment requirements, driver qualifications, and operating practices; and such other matters as may be pertinent;

(e) in recognition of the limited prospects of federal revision of section 127, Title 23, U.S. Code, and in order to protect participating jurisdictions against any possibility of withholding or forfeiture of federal-aid highway funds, it is the further objective of the participating jurisdictions to secure congressional approval of this agreement and specifically of the vehicle size and weight standards set forth in subsection (a) of this section;

(f) in recognition of desire for a degree of national uniformity of size and weight regulations, it is the further objective to encourage development of broad, uniform size and weight standards on a national basis and further that procedures adopted under this agreement be compatible with national standards.

Article VI. Entry Into Force and Withdrawal

Section 1. This agreement shall enter into force when enacted into law by any two or more jurisdictions. Thereafter, this agreement shall become effective as to any other jurisdiction upon its enactment thereof, except as otherwise provided in section 8, Article III.

Section 2. Any participating jurisdiction may withdraw from this agreement by canceling the same but no such withdrawal shall take effect until 30 days after the designated representative of the withdrawing jurisdiction has given notice in writing of the withdrawal to all other participating jurisdictions.

Article VII. Construction and Severability

Section 1. This agreement shall be liberally construed so as to effectuate the purposes thereof.

Section 2. The provisions of this agreement shall be severable and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any participating jurisdiction or the applicability thereto to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement shall not be affected thereby. If this agreement shall be held contrary to the constitution of any jurisdiction participating herein, the agreement shall remain in full force and effect as to the jurisdictions affected as to all severable matters.

Article VIII. Filing of Documents

Section 1. A copy of this agreement, its amendments, and rules promulgated thereunder and interpretations thereof shall be filed in the highway department in each participating jurisdiction and shall be made available for review by interested parties.

Article IX. Existing Statutes Not Repealed

Section 1. All existing statutes prescribing weight and size standards and all existing statutes relating to special permits shall continue to be of force and effect until amended or repealed by law.

Article X. State Government Departments Authorized to Cooperate With Cooperating Committee

Section 1. Within appropriations available therefor, the departments, agencies, and officers of the government of this state shall cooperate with and assist the cooperating committee within the scope contemplated by Article IV, subsections 1(a) and 1(b) of the agreement. The departments, agencies, and officers of the government of this state are authorized generally to cooperate with said cooperating committee.

History: En. Sec. 1, Ch. 224, L. 1981.

CHAPTER 11

RECORDS AND REPORTS OF CONVICTIONS

Part 1 — General Provisions

Section

61-11-101. Report of convictions and suspension or revocation of driver's licenses — surrender of licenses.
61-11-102. Records to be kept by the division.
61-11-103. Violation of conservation speed limit — no record permitted.
61-11-104. Reports by justices of the peace and county treasurers.
61-11-105. Restrictions on release of information.

Part 2 — Habitual Traffic Offenders

61-11-201. Purpose.

61-11-202. Legislative intent.
61-11-203. Definitions.
61-11-204. Division's duties.
61-11-205. County attorney to file verified complaint.
61-11-206. Notification of attorney general — his duties.
61-11-207. Abstracts admissible as evidence.
61-11-208. Court to issue show cause order.
61-11-209. Service of process.
61-11-210. Court hearing.
61-11-211. Division to revoke license of habitual offender — method of removal of points upon revocation.
61-11-212. Penalties.
61-11-213. Habitual traffic offender operating motor vehicle guilty of misdemeanor.
61-11-214. When defendant certified to district court for trial.
61-11-215. Construction.

Part 1

General Provisions

61-11-101. Report of convictions and suspension or revocation of driver's licenses — surrender of licenses. (1) Whenever any person is convicted of any offense for which chapter 5 makes mandatory the revocation of the operator's or chauffeur's license of such person by the division, the court in which such conviction is had shall require the surrender to it of all operator's and chauffeur's licenses then held by the person so convicted. The court shall thereupon, within 5 days, forward the license to the division and at the same time forward a record of such conviction to the division, providing that if such person does not possess a driver's license the court shall so indicate in its report to the division.

(2) Every court having jurisdiction over offenses committed under any act of this state or municipal ordinance regulating the operation of motor vehicles on highways shall forward, within 5 days, to the division a record of the conviction or forfeiture of bail, not vacated, of any person in the court for a violation of any such laws, other than regulations governing standing or parking, and may recommend the suspension of the operator's or chauffeur's license of the person so convicted. The court may also recommend that the division issue a restricted probationary license in lieu of the suspension required in 61-5-208(2) on the condition that the individual attend a driver improvement school or an alcohol treatment program if one is available. The division shall issue a restricted probationary license unless the person otherwise is not entitled to a Montana operator's or chauffeur's license.

(3) Any court or other agency of this state, or a subdivision thereof, which has jurisdiction to take any action suspending, revoking, or otherwise limiting a license to drive shall report any such action and the adjudication upon which it is based to the division within 5 days on forms furnished by the division.

History: (1), (2)En. Sec. 29, Ch. 267, L. 1947; amd. Sec. 1, Ch. 165, L. 1957; amd. Sec. 1, Ch. 27, L. 1961; amd. Sec. 1, Ch. 386, L. 1973; amd. Sec. 3, Ch. 430, L. 1977; Sec. 31-145, R.C.M. 1947; (3)En. Sec. 5, Ch. 154, L. 1963; Sec. 31-167, R.C.M. 1947; R.C.M. 1947, 31-145(a), (b), 31-167.

61-11-102. Records to be kept by the division. (1) The division shall file every application for a driver's license received by it and shall maintain suitable indexes containing, in alphabetical order:

(a) all applications denied and on each thereof note the reasons for such denial;

(b) all applications granted; and

(c) the name of every licensee whose license has been suspended or revoked by the division and after each such name note the reasons for such action.

(2) The division shall also file all accident reports and abstracts of court records of convictions received by it under the laws of this state and in connection therewith maintain convenient records or make suitable notations in order that an individual record of each licensee showing the convictions of such licensee and certain traffic accidents in which he has been involved shall be readily ascertainable and available for the consideration of the division upon any application for renewal of license and at other suitable times. No record of involvement in a traffic accident may be entered on a licensee's record unless he was convicted, as defined in 61-11-203, for an act causally related to the accident.

(3) The division is further authorized, upon receiving a record of the conviction in this state of a nonresident driver of a motor vehicle of any offense under the motor vehicle laws of this state, to forward a certified copy of such record to the motor vehicle administrator in the state wherein the person so convicted is a resident.

History: En. Secs. 25, 27, Ch. 267, L. 1947; R.C.M. 1947, 31-141, 31-143(b); amd. Sec. 1, Ch. 503, L. 1979.

61-11-103. Violation of conservation speed limit — no record permitted. No violation of 61-8-304 shall be recorded or charged against the driver's record of a person convicted of violating 61-8-304, and no insurance company shall hold a violation of 61-8-304 against the insured, and there shall be no increase in premiums due to a violation of 61-8-304.

History: En. 32-2144.6 by Sec. 6, Ch. 60, L. 1974; amd. Sec. 1, Ch. 248, L. 1974; amd. Sec. 1, Ch. 6, L. 1975; R.C.M. 1947, 32-2144.6(2).

61-11-104. Reports by justices of the peace and county treasurers. Justices of the peace and county treasurers shall furnish to the division of motor vehicles statements of all fees, fines, and forfeitures and records of cases which involve the state highway patrol as the division may request.

History: En. Sec. 16, Ch. 199, L. 1943; R.C.M. 1947, 31-116.

61-11-105. Restrictions on release of information. No information relating to a traffic accident that did not involve a conviction, as defined in 61-11-203, may be released by the division unless the release is requested or approved by a party involved in the accident or is required by court order or a duly executed subpoena.

History: En. Sec. 2, Ch. 503, L. 1979.

Compiler's Comments

Codification. Sec. 3, Ch. 503, L. 1979, provided: "Section 2 is intended to be codified as an integral part of Title 61, chapter 11, part 1."

Part 2

Habitual Traffic Offenders

61-11-201. Purpose. This part is predicated upon the belief and philosophy that innocent drivers and other innocent passengers and pedestrians have a constitutional right to live, free from fear of death or injury from habitual traffic offenders. Further, it is the purpose of this part to reduce the number of motor vehicle accidents in this state and to provide greater safety to the motoring public and others by denying to the habitual traffic offenders the privilege of operating a motor vehicle upon the public streets and highways of this state.

History: **En. 31-175 by Sec 1, Ch. 362, L. 1974; R.C.M. 1947, 31-175.**

61-11-202. Legislative intent. It is the legislative intent of this part to:

(1) establish criteria and procedures by which persons who have demonstrated their apparent indifference for the safety and welfare of others and their disrespect for the laws of this state and its political subdivisions and their disregard for the orders of its courts and administrative agencies may be adjudged habitual traffic offenders; and

(2) impose increased deprivation of the privilege to operate a motor vehicle upon these persons.

History: **En. 31-176 by Sec. 2, Ch. 362, L. 1974; R.C.M. 1947, 31-176.**

61-11-203. Definitions. As used in this part, the following definitions apply:

(1) "Conviction" means a finding of guilt by duly constituted judicial authority, a plea of guilty, or a forfeiture of bail, bond, or other security deposited to secure appearance by a person charged with having committed any offense relating to the use or operation of a motor vehicle which is prohibited by law, ordinance, or administrative order.

(2) "Habitual traffic offender" means any person who within a 3-year period accumulates 30 or more conviction points according to the schedule specified in this subsection:

(a) deliberate homicide resulting from the operation of a motor vehicle, 15 points;

(b) mitigated deliberate homicide or negligent homicide resulting from operation of a motor vehicle, 12 points;

(c) any offense punishable as a felony under the motor vehicle laws of Montana or any felony in the commission of which a motor vehicle is used, 12 points;

(d) driving while under the influence of intoxicating liquor or narcotics or drugs of any kind, 10 points;

(e) operating a motor vehicle while his license to do so has been suspended or revoked, 6 points;

(f) failure of the driver of a motor vehicle involved in an accident resulting in death or injury to any person to stop at the scene of the accident and give the required information and assistance, as defined in 61-7-105, 8 points;

(g) willful failure of the driver involved in an accident resulting in property damage of $250 to stop at the scene of the accident and give the required information or to otherwise fail to report an accident in violation of the law, 4 points;

(h) reckless driving, 5 points;

(i) illegal drag racing or engaging in a speed contest in violation of the law, 5 points;

(j) operating a motor vehicle without a license to do so, 2 points (this subsection (j) does not apply to operating a motor vehicle within a period of 180 days from the date the license expired);

(k) speeding, 3 points;

(l) all other moving violations, 2 points. There shall be no multiple application of cumulative points when two or more charges are filed involving a single occurrence. If there are two or more convictions involving a single occurrence, only the number of points for the specific conviction carrying the highest points shall be chargeable against that defendant.

(3) "License" means any type of license or permit to operate a motor vehicle.

History: En. 31-177 by Sec. 3, Ch. 362, L. 1974; amd. Sec. 48, Ch. 359, L. 1977; R.C.M. 1947, 31-177(1), (2), (5); amd. Sec. 1, Ch. 519, L. 1979.

61-11-204. Division's duties. Whenever it appears from the records maintained in the division that a person's driving record brings him within the definition of an habitual traffic offender, as defined in 61-11-203(2), the division shall forthwith certify two copies of that person's driving record and two copies of all relevant abstracts of conviction. One copy of the record and abstracts shall be certified to the attorney general and one copy of the record and abstracts shall be certified to the county attorney for the county wherein the person is found. If the person is not licensed by Montana to drive a motor vehicle, but is licensed in another state, the division may certify the copy of the records and abstracts to the attorney general and also to the county attorney for the county in which the person is found or, in the alternative, to the county attorney for the county of Lewis and Clark.

History: En. 31-178 by Sec. 4, Ch. 362, L. 1974; R.C.M. 1947, 31-178.

61-11-205. County attorney to file verified complaint. Immediately upon receiving the certified documents from the division, the county attorney shall, in the name of the state on the relation of the division, file a verified complaint with the district court for a civil proceeding against the person named in the certified document and such documents shall be a part of the verified complaint.

History: En. 31-179 by Sec. 5, Ch. 362, L. 1974; R.C.M. 1947, 31-179.

61-11-206. Notification of attorney general — his duties. Immediately upon the filing of the verified complaint under 61-11-205, the county attorney shall notify the attorney general that the verified complaint has been filed. If the county attorney fails to file the verified complaint within a reasonable time, the attorney general may order the county attorney to file the verified complaint, or in the alternative, the attorney general may file the verified complaint under 61-11-205 in the proper county as above set forth.

History: En. 31-180 by Sec. 6, Ch. 362, L. 1974; R.C.M. 1947, 31-180.

61-11-207. Abstracts admissible as evidence. Official abstracts of the records of convictions and bond forfeitures in the custody of the division, certified in writing by the division to be a correct account of the said convictions and bond forfeitures, may be admitted in evidence in any judicial proceeding under this part upon establishing the proper foundation.

History: **En. 31-181 by Sec. 7, Ch. 362, L. 1974; R.C.M. 1947, 31-181.**

61-11-208. Court to issue show cause order. The court in which the verified complaint is filed shall advance the proceeding upon the docket and shall enter an order, which incorporates the verified complaint, to show cause why the person named therein should not be adjudged an habitual traffic offender.

History: **En. 31-182 by Sec. 8, Ch. 362, L. 1974; R.C.M. 1947, 31-182.**

61-11-209. Service of process. Service of process shall be made in the same manner as is allowed in any other civil action in this state.

History: **En. 31-183 by Sec. 9, Ch. 362, L. 1974; R.C.M. 1947, 31-183.**

61-11-210. Court hearing. At the time and place designated in the order, the court shall hold a hearing upon the show cause order. If the court finds that the defendant is not the person named in the verified complaint or that he is not an habitual traffic offender as defined in 61-11-203(2), the proceedings shall be dismissed. If the court finds that the defendant is the same person named in the verified complaint and that the defendant is an habitual traffic offender as defined in 61-11-203(2), the court shall so find and adjudge the defendant an habitual traffic offender, and by appropriate order direct the person so adjudged to surrender to the court his license to operate a motor vehicle on the streets and highways of this state. Upon a finding adverse to the defendant, the clerk of the court wherein the hearing is held shall file with the division a copy of the court's order together with the defendant's license. If the proceeding is dismissed, the clerk of the court wherein the hearing is held shall file with the division a copy of the court's order dismissing the proceeding, which order shall state the grounds upon which the dismissal was based, and shall specify the court findings on the conviction points which have been accrued by the defendant.

History: **En. 31-184 by Sec. 10, Ch. 362, L. 1974; R.C.M. 1947, 31-184.**

61-11-211. Division to revoke license of habitual offender — method of removal of points upon revocation. Upon receipt of a court order declaring an habitual offender, the division shall revoke the driver's license or driving privilege of the individual named in the order for a period of 3 years from the date of the order. Additionally, the department shall remove from that individual's record those habitual offender points which were certified to the county attorney in the certification required by 61-11-204.

History: **En. 31-184.1 by Sec. 1, Ch. 176, L. 1975; R.C.M. 1947, 31-184.1; amd. Sec. 91, Ch. 421, L. 1979.**

61-11-212. Penalties. No person who has been adjudged an habitual traffic offender shall be issued a license to operate a motor vehicle in this state until:

(1) a period of 3 years has elapsed from the date of the final order of the court adjudging the person an habitual traffic offender;

(2) the person has met all the requirements of all applicable laws and rules relating to the licensing of motor vehicle operators in this state; and

(3) the person files with the division, and maintains for a period of 3 years, proof of his financial responsibility in the limits required by law.

History: En. 31-185 by Sec. 11, Ch. 362, L. 1974; R.C.M. 1947, 31-185.

61-11-213. Habitual traffic offender operating motor vehicle guilty of misdemeanor. Any person found to be an habitual traffic offender under this part, and who thereafter operates a motor vehicle in this state while the order of the court prohibiting such operation remains in effect, shall be guilty of a misdemeanor, and upon conviction thereof shall be imprisoned for a period of not more than 1 year or fined not more than $1,000, or both. However, in cases wherein the prohibited operation of a motor vehicle by an habitual traffic offender is necessitated in a situation of extreme emergency in order to save life, limb, or property, he shall not be deemed guilty of a violation under this part.

History: En. 31-187 by Sec. 13, Ch. 362, L. 1974; R.C.M. 1947, 31-187.

61-11-214. When defendant certified to district court for trial. For the purpose of enforcing the provisions of this part, in any case in which the defendant is charged with operating a motor vehicle while his license to do so is suspended or revoked, or is charged with driving without a license, the court, before hearing such charge, shall ascertain whether the defendant has been adjudged an habitual traffic offender and by reason of that judgment is prohibited from operating a motor vehicle in this state. If the court determines that the defendant has been so adjudged and that that judgment remains in effect, the court shall certify the case to the district court of its jurisdiction for trial.

History: En. 31-188 by Sec. 14, Ch. 362, L. 1974; amd. Sec. 1, Ch. 109, L. 1975; R.C.M. 1947, 31-188.

61-11-215. Construction. Nothing contained in this part shall be construed as to repeal, modify, or amend any other laws or parts of laws, or any existing ordinance of any political subdivision relating to the operation or licensing of motor vehicles, the licensing of persons to operate motor vehicles or providing penalties for the violation thereof; nor shall anything in this part be construed so as to preclude the exercise of regulatory powers of any division, agency, department, or political subdivision of this state or of the federal government having the statutory power to regulate the operation and licensing of motor vehicles and the licensing of motor vehicle operators.

History: En. 31-189 by Sec. 15, Ch. 362, L. 1974; R.C.M. 1947, 31-189.

CHAPTER 12

MISCELLANEOUS PROVISIONS

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Section
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Part 1

Powers of Local Authorities

61-12-101. Powers of local authorities to regulate traffic. The provisions of chapter 8 and chapter 9 shall not be deemed to prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power from:

(1) regulating the standing or parking of vehicles;

(2) regulating the traffic by means of police officers or traffic-control devices;

(3) regulating or prohibiting processions or assemblages on the highways;

(4) designating particular highways as one-way highways and requiring that all vehicles thereon be moved in one specific direction;

(5) regulating the speed of vehicles in public parks;

(6) designating any highway as a through highway and requiring that all the vehicles stop before entering or crossing the same, designating any intersection as a stop intersection, and requiring all vehicles to stop at one or more entrances to such intersections;

(7) restricting the use of highways as authorized in 61-10-128(2);

(8) regulating the operation of bicycles and requiring the registration and licensing of same, including the requirement of a registration fee;

(9) regulating or prohibiting the turning of vehicles or specified types of vehicles at intersections;

(10) altering the speed limits as authorized herein;

(11) regulating the driving of vehicles by any person who is an habitual user of or under the influence of any narcotic drug or who is under the influence of any other drug to a degree which renders him incapable of safely driving a vehicle within the incorporated limits of any city or town;

(12) regulating or prohibiting any person who is under the influence of intoxicating liquor from driving or being in actual physical control of any vehicle within the incorporated limits of any city or town;

(13) regulating or prohibiting the driving of vehicles by any person in a willful or wanton disregard for the safety of persons or property within the incorporated limits of any city or town;

(14) enacting as ordinances any and all provisions of chapter 8 or chapter 9 and any and all other laws regulating traffic, pedestrians, vehicles, and operators thereof, not in conflict with state law or federal regulations and to enforce the same within their jurisdiction.

History: **En. Sec. 28, Ch. 263, L. 1955; amd. Sec. 2, Ch. 201, L. 1957; amd. Sec. 1, Ch. 240, L. 1959; R.C.M. 1947, 32-2131.**

Part 2

Enforcement by Department of Highways Personnel

61-12-201. Appointment of employees as peace officers. The director of highways may appoint employees of the department as peace officers to carry out this part. The employees appointed may include only those employees of the department who are employed in the administration of the gross vehicle weight functions of the department. Each employee appointed shall be issued a certificate of appointment and execute an oath of office which shall be entered into the records of the department.

History: **En. Sec. 1, Ch. 242, L. 1971; amd. Sec. 42, Ch. 316, L. 1974; R.C.M. 1947, 32-1632.**

61-12-202. Training of department peace officers — rules. (1) The department shall provide such training as required to qualify those employees to competently perform their duties under this part and shall adopt such rules as are required and necessary for qualification of those employees as peace officers.

(2) An employee may not make arrests until he has successfully completed such training as required by the department.

History: **En. Secs. 2, 3, Ch. 242, L. 1971; amd. Secs. 43, 44, Ch. 316, L. 1974; R.C.M. 1947, 32-1633, 32-1634.**

61-12-203. Official attire required for making arrests and carrying firearms. Qualified employees may make arrests throughout the state only when dressed in official uniform and displaying the official badge authorized by the department. Authorized employees may not carry firearms unless officially attired.

History: **En. Sec. 4, Ch. 242, L. 1971; amd. Sec. 45, Ch. 316, L. 1974; R.C.M. 1947, 32-1635.**

61-12-204. Identification badge and uniform. Employees of the department engaged in the enforcement of this part shall wear and prominently display an identification badge or device with the employee's name and title shown on the identification badge or device. The department may authorize uniform dress for department employees engaged in such enforcement.

History: **En. Sec. 6, Ch. 242, L. 1971; amd. Sec. 47, Ch. 316, L. 1974; R.C.M. 1947, 32-1637.**

61-12-205. Power to inspect vehicle registration, receipts, and other documents. Employees of the department appointed under 61-12-201 may when officially dressed make reasonable inspection of vehicle registration receipts, department receipts and registrations, special permits, and other documents required to be carried in or for a vehicle traveling on the public highways of Montana.

History: **En. Sec. 5, Ch. 242, L. 1971; amd. Sec. 46, Ch. 316, L. 1974; R.C.M. 1947, 32-1636.**

61-12-206. Offenses for which arrest authorized. (1) Employees appointed under 61-12-201 may make arrests for violations of the following statutory provisions only:

(a) part 1, chapter 10, of this title;
(b) part 3, chapter 4, of this title;
(c) sections 15-24-201 through 15-24-205;
(d) sections 15-70-302 through 15-70-307;
(e) sections 15-70-311 through 15-70-314;
(f) section 61-3-502(1);
(g) sections 61-10-201 through 61-10-215;
(h) sections 61-10-222 through 61-10-224;
(i) sections 61-10-231 through 61-10-233.

(2) These employees may not arrest for violations other than specified in this section.

History: **En. Sec. 8, Ch. 242, L. 1971; amd. Sec. 49, Ch. 316, L. 1974; R.C.M. 1947, 32-1639; amd. Sec. 5, Ch. 39, L. 1981.**

Compiler's Comments

Commissioner correction. References to 61-4-114 through 61-4-116 were added by the Code Commissioner, 1979. These sections were inadvertently omitted during the recodification process and should have been included as they are derived from Title 32, chapter 33, R.C.M. 1947, which was included in the list of statutory provisions for violation of which arrests may be made under former 32-1639, R.C.M. 1947.

61-12-207. Cooperation with other agencies. Such employees of the department shall cooperate with other law enforcement agencies.

History: En. Sec. 9, Ch. 242, L. 1971; amd. Sec. 50, Ch. 316, L. 1974; R.C.M. 1947, 32-1640.

61-12-208. Duty upon making an arrest — power to fix and accept bail. Such employees, upon making an arrest, shall deliver to the offender a form of notice to appear, describing the nature of the offense, with instructions on the notice for the offender to report to the nearest justice of the peace. The employee may accept a deposit for appearance justifiable for the offense charged. The person arrested may be detained for a reasonable time for the purpose of issuing the notice. If the employee accepts bail, he shall give a signed receipt to the offender, setting forth the amount received. The employee shall then deliver the bail money to the justice of the peace before whom the offender is to appear, and the justice of the peace shall give a receipt to the employee for the amount of bail money delivered. After the filing of the complaint and appearance of the defendant, the justice of the peace shall assume jurisdiction and may set and accept further appearance bail bond.

History: En. Sec. 10, Ch. 242, L. 1971; amd. Sec. 51, Ch. 316, L. 1974; R.C.M. 1947, 32-1641; amd. Sec. 92, Ch. 421, L. 1979.

Part 3

Motor Club Service Companies

61-12-301. Terms defined. The following words and phrases when used in this part shall for the purpose of this part have the meanings respectively ascribed to them in this section, except in those instances where the context of the part clearly indicates that they shall have a different meaning:

(1) "Agent" means whoever solicits the purchase of service contracts, as herein defined, or transmits for another any such contract or application therefor to or from the company, or acts or aids in any manner in the delivery or negotiation of any such contract, or of the renewal or continuance thereof.

(2) "Bail bond service" means any act or acts by a company, as herein defined, the purpose of which is to furnish or procure for any person accused of violation of any law of this state a cash deposit, bond, or other undertaking required by law in order that the accused might enjoy his personal freedom pending trial.

(3) "Buying and selling service" means any act or acts of a company, as herein defined, whereby the holder of a service contract with any such company is aided in any way in the purchase or sale of an automobile.

(4) "Commissioner" means the commissioner of insurance of the state of Montana or his assistants or deputies or other persons authorized to act for him.

(5) "Company" means any person, firm, partnership, company, association, or corporation engaged in selling, furnishing, or procuring, either as principal or agent, for a consideration, motor club service as herein defined.

(6) "Discount service" means any act or acts by a company, as herein defined, resulting in the giving of special discounts, rebates, or reductions of price on gasoline, oil, repairs, insurance, parts, accessories, or service for motor vehicles to holders of service contracts with any such company.

(7) "Emergency road service" means any act or acts by a company, as herein defined, consisting of the adjustment, repair, or replacement of the equipment, tires, or mechanical parts of any automobile so as to permit it to be operated under its own power.

(8) "Financial service" means any act or acts by a company, as herein defined, whereby loans or other advances of money, with or without security, are made to holders of service contracts with any such company.

(9) "Legal service" means any act or acts by a company, as herein defined, consisting of the hiring, retaining, engaging, or appointing of an attorney or other person to give professional advice to or represent holders of service contracts with any such company in any court, as the result of liability incurred by the right of action accruing to the holder of a service contract as a result of the ownership, operation, use, or maintenance of a motor vehicle.

(10) "Map service" means any act or acts by a company, as herein defined, by which road maps are furnished without cost to holders of service contracts with any such company.

(11) "Motor club service" means the rendering, furnishing, or procuring of towing service, emergency road service, insurance service, bail bond service, legal service, discount service, financial service, buying and selling service, theft service, map service, and touring service, or any three or more thereof, as herein defined, to any person or persons in connection with the ownership, operation, use, or maintenance of a motor vehicle by such other person or persons in consideration of such other person or persons being or becoming a member or members of any company rendering, procuring, or furnishing the same, or being or becoming in any manner affiliated therewith, or being or becoming entitled to receive membership or other motor club service therefrom by virtue of any agreement or understanding with any such company.

(12) "Service contract" means any agreement or understanding whereby any company, as herein defined, for a consideration promises to render, furnish, or procure for any other person or persons, whether they be members of such company or otherwise, motor club service, as herein defined.

(13) "Theft service" means any act or acts by a company, as herein defined, the purpose of which is to locate, identify, or recover a motor vehicle owned or controlled by the holder of a service contract with any such company which has been or may be stolen or to detect or apprehend the person guilty of such theft.

(14) "Touring service" means any act or acts by a company, as herein defined, by which touring information is furnished without cost to holders of service contracts with any such company.

(15) "Towing service" means any act or acts by a company, as herein defined, consisting of the drafting or moving of a motor vehicle from one place to another under other than its own power.

History: En. Sec. 1, Ch. 131, L. 1931; re-en. Sec. 4211.1, R.C.M. 1935; R.C.M. 1947, 66-1101.

61-12-302. Companies and agents to be licensed. No company or any agent, as herein defined, doing business in this state shall execute, issue, or deliver any service contract to any person or persons owning or operating motor vehicles without first having obtained a license from the commissioner as provided for in this part, nor shall any such company or agent collect or receive from any person or persons in advance of the execution, issuance, or delivery of any such service contract any money or other thing of value upon any promise or agreement to execute, issue, or deliver any such service contract without first having obtained a license from said commissioner as provided for in this part.

History: En. Sec. 2, Ch. 131, L. 1931; re-en. Sec. 4211.2, R.C.M. 1935; R.C.M. 1947, 66-1102.

61-12-303. Requirements for license. (1) No license shall be issued by the commissioner until the company has filed with him the following:

(a) a formal application in such form and detail as the commissioner may require, executed under oath by its president or other principal officer;

(b) a copy of the form of its contract;

(c) a certified copy of its charter or articles of incorporation and its bylaws, if any;

(d) a financial statement in such form and detail as the commissioner may require, executed on oath by its president or other principal officer;

(e) a certificate from the state treasurer that it has complied with 61-12-304 in all cases where a deposit of cash or a bond is required by this part;

(f) a certificate from the corporation commissioner of the state of Montana, in the event it be a corporation, that it has complied with the corporation laws of said state.

(2) No license shall be issued by the commissioner until the company has paid to the commissioner $100 as an annual license fee, or the pro rata portion thereof necessary to be paid to the end of the current calendar year from the date of the application for such license.

(3) No license shall be issued by the commissioner until the company has satisfied him by such examination as he may make and such evidence as he may require, in his discretion, that such company has complied with the laws of the state of Montana and that its management is trustworthy and competent.

History: En. Sec. 3, Ch. 131, L. 1931; re-en. Sec. 4211.3, R.C.M. 1935; R.C.M. 1947, 66-1103.

61-12-304. Deposits required. No license shall be granted to a company as herein defined except as hereinafter stated until it has deposited with the state treasurer the sum of $25,000 in cash or in lieu thereof a bond in a form prescribed by the commissioner payable to the state of Montana in the sum of $25,000, with surety approved by the commissioner, conditioned upon the faithful performance of its service contracts and payment of any fines or penalties levied against it for failure to comply with this part; provided, however, that when any company, as herein defined, shall prove to the commissioner that it has been in continuous, active operation in the state for a period of more than 5 years immediately last past and has a paid membership of more than 5,000 members within the state or that there are more than 5,000 holders of its service contracts within the state and that it is being properly managed, is rendering to its members the services promised to them, and is financially responsible, no such cash deposit or bond shall be required while such company remains in such condition. The foregoing cash deposit or bond is not required in any instance as a penalty, but for the protection of the public only.

History: **En. Sec. 4, Ch. 131, L. 1931; re-en. Sec. 4211.4, R.C.M. 1935; R.C.M. 1947, 66-1104.**

61-12-305. Expiration of license. Every license issued hereunder shall expire annually on January 1 of each year unless sooner revoked or suspended as hereinafter provided.

History: **En. Sec. 5, Ch. 131, L. 1931; re-en. Sec. 4211.5, R.C.M. 1935; R.C.M. 1947, 66-1105.**

61-12-306. Revocation of license. If the commissioner shall, at any time for cause shown and after a hearing, determine that a company has violated any provision or provisions of this part or that it is insolvent or that its assets are less than its liabilities or that it or its officers refuse to submit to an examination or that it is transacting business fraudulently or that its management or business methods are improper or hazardous to the holders of its service contracts, he shall thereupon revoke or suspend its license and shall give notice thereof to the public in such manner as he may deem proper.

History: **En. Sec. 6, Ch. 131, L. 1931; re-en. Sec. 4211.6, R.C.M. 1935; R.C.M. 1947, 66-1106.**

61-12-307. Financial statement to be filed. Every company shall annually, on or before February 1 of each year, file with the commissioner a financial statement in such form and detail as he may prescribe, executed on oath by its president or other principal officer, showing its financial condition on December 31 of the preceding year.

History: **En. Sec. 7, Ch. 131, L. 1931; re-en. Sec. 4211.7, R.C.M. 1935; R.C.M. 1947, 66-1107.**

61-12-308. Service contract to be filed with commissioner. No service contract shall be executed, issued, or delivered in this state until a copy of the form thereof has been on file for 30 days with the commissioner, unless before the expiration of said 30 days he shall have approved the form in writing; nor shall any service contract be executed, issued, or delivered at any time in this state if the commissioner notified the company in writing within said 30 days that in his opinion the form of the contract does not comply with the laws of this state, specifying the reasons therefor.

History: **En. Sec. 8, Ch. 131, L. 1931; re-en. Sec. 4211.8, R.C.M. 1935; R.C.M. 1947, 66-1108.**

61-12-309. Contracts to be in duplicate. Every service contract executed, issued, or delivered in this state shall be made in duplicate, and shall be signed by the company issuing the same, or by its duly authorized agent, and by the party purchasing the same, and one copy thereof shall be kept by said company, and the other copy shall be delivered to the party purchasing the same.

History: **En. Sec. 9, Ch. 131, L. 1931; re-en. Sec. 4211.9, R.C.M. 1935; R.C.M. 1947, 66-1109.**

61-12-310. Form of contract. No service contract shall be executed, issued, or delivered in this state unless it contains the following:

(1) the exact corporate or other name of the company;

(2) the exact location of its home office and of its usual place of business in this state, giving street number and city;

(3) a provision that the contract may be canceled at any time by either the company or the holder, and that the holder shall, if he has actually paid the consideration, thereupon be entitled to the unused portion of the consideration paid for such contract, calculated on a pro rata basis without any deductions;

(4) a provision plainly specifying the services promised and that the holder shall not be required to pay any sum for any services specified in the contract in addition to the amount specified in the contract, and further specifying the territory wherein such services are to be rendered, and the date when such service shall commence.

History: En. Sec. 10, Ch. 131, L. 1931; re-en. Sec. 4211.10, R.C.M. 1935; R.C.M. 1947, 66-1110.

61-12-311. Companies to be licensed. No person shall solicit or aid in the solicitation of another person to purchase a service contract issued by a company not duly licensed under this part.

History: En. Sec. 11, Ch. 131, L. 1931; re-en. Sec. 4211.11, R.C.M. 1935; R.C.M. 1947, 66-1111.

61-12-312. Contract not to be misrepresented. No company and no officer or agent thereof shall orally or in writing misrepresent the terms, benefits, or privileges of any service contract issued or to be issued by it.

History: En. Sec. 12, Ch. 131, L. 1931; re-en. Sec. 4211.12, R.C.M. 1935; R.C.M. 1947, 66-1112.

61-12-313. Contracts binding on company although not complying with part. Any service contract made, issued, or delivered contrary to any provision of this part shall nevertheless be valid and binding on the company.

History: En. Sec. 13, Ch. 131, L. 1931; re-en. Sec. 4211.13, R.C.M. 1935; R.C.M. 1947, 66-1113.

61-12-314. Applicability. Nothing in this part shall apply to a duly authorized attorney at law acting in the usual course of his profession or to any insurance company, bonding company, or surety company, now or hereafter duly and regularly licensed and doing business as such under the laws of the state.

History: En. Sec. 14, Ch. 131, L. 1931; re-en. Sec. 4211.14, R.C.M. 1935; R.C.M. 1947, 66-1114.

61-12-315. Penalty for violation. If any person shall violate the provisions of this part, such person shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $500 or by imprisonment in the county jail for not more than 6 months or by both such fine and imprisonment.

History: En. Sec. 15, Ch. 131, L. 1931; re-en. Sec. 4211.15, R.C.M. 1935; R.C.M. 1947, 66-1115.

Part 4

Removal and Sale of Abandoned Vehicles

61-12-401. Taking vehicle into custody. (1) The following law enforcement agencies may take into custody any motor vehicle found abandoned for a period of 48 hours or more on any public highway, or for a period of 5 days or more on any city street, public property, or private property:

(a) the Montana highway patrol if the vehicle is upon the right-of-way of any public highway other than a county road;

(b) the sheriff of the county if the vehicle is upon the right-of-way of any county road within the county;

(c) the city police if the vehicle is upon a city street within the city.

(2) The Montana highway patrol, sheriff of the county, or the city police may use its or his personnel, equipment, and facilities for the removal and preservation of the vehicle, or may hire other personnel, equipment, and facilities for those purposes.

(3) At the request of the owner or person in lawful possession or control of the private property, the sheriff of the county in which the vehicle is located or the city police of the city in which the vehicle is located may remove and hold it in the manner and upon the conditions provided in subsections (1) and (2).

History: En. Sec. 2, Ch. 288, L. 1967; amd. Sec. 2, Ch. 169, L. 1969; R.C.M. 1947, 53-902; amd. Sec. 1, Ch. 445, L. 1979.

61-12-402. Notice to owner. (1) Within 72 hours after any vehicle is removed and held by or at the direction of the Montana highway patrol or the city police, they shall notify the sheriff of the county in which the vehicle was located at the time it was taken into custody and the place where the vehicle is being held. In addition the Montana highway patrol or the city police shall furnish the sheriff a complete description of the vehicle to include year, make, model, serial number, and license number if available, any costs incurred to that date in the removal, preservation, and custody of the vehicle, and any available information concerning its ownership.

(2) The sheriff shall make reasonable efforts to ascertain the name and address of the owner, lienholder, or person entitled to possession of the vehicle. If such name and address are ascertained, the sheriff shall notify such owner and lienholder or person of the location of the vehicle.

(3) If the vehicle is registered in the office of the division of motor vehicles of this state, notice shall be deemed given when a registered or certified letter addressed to the registered owner of the vehicle and lienholder, if any, at the latest address shown by the records in the office of the division, return receipt requested and postage prepaid thereon, is mailed at least 30 days before the vehicle is sold as hereinafter provided.

(4) If the identity of the last registered owner cannot be determined, or if the registration contains no address for the owner, or if it is impossible to determine with reasonable certainty the identity and addresses of all lienholders, notice by one publication in one newspaper of general circulation in the county where the motor vehicle was abandoned shall be sufficient to meet all requirements of notice pursuant to this part. Such notice by publication can contain multiple listings of abandoned vehicles. Any such notice shall be within the time requirements prescribed for notice by certified or registered mail and shall have the same contents required for a notice by certified or registered mail.

(5) If the abandoned vehicle is in the possession of a motor vehicle wrecking facility licensed under 75-10-511, the wrecking facility may make the

required search to ascertain the name and address of the owner, lienholder, or person entitled to possession of the vehicle and shall give the notices required in subsections (2) through (4). The wrecking facility shall deliver to the sheriff a certificate describing the efforts made to ascertain the name and address of the owner, lienholder, or person entitled to possession of the vehicle and shall deliver to the sheriff proof of the notice given.

(6) A vehicle found by law enforcement officials to be a "junk vehicle" as defined by 75-10-501 and certified as having an appraised value of $100 or less as determined by the county assessor in accordance with the rules of the department of revenue may be directly submitted for disposal in accordance with the provisions of part 5 of chapter 10, Title 75, upon a release given by the sheriff. In the release the sheriff shall include a description of the vehicle including year, make, model, serial number, and license number if available. A release provided by the sheriff under this section shall be transmitted to the motor vehicle wrecking facility and shall be considered by that facility to meet the requirements for records under 75-10-512 and 75-10-513. Vehicles described in this section may be submitted without notice and without a required holding period.

History: En. Sec. 3, Ch. 288, L. 1967; amd. Sec. 1, Ch. 53, L. 1974; R.C.M. 1947, 53-903; amd. Sec. 1, Ch. 191, L. 1979.

61-12-403. Reclaiming vehicle. The owner, lienholder, or person entitled to possession of the vehicle may reclaim it at any time after it is taken into custody and before it is sold. He shall present to the sheriff of the county in which the vehicle was located at the time it was taken into custody satisfactory proof of ownership or right to possession, and pay the costs and expenses incurred in the removal, preservation, and custody of the vehicle. He shall not be required to pay storage charges for a period longer than 90 days.

History: En. Sec. 4, Ch. 288, L. 1967; R.C.M. 1947, 53-904.

61-12-404. Sale of vehicle if not reclaimed. (1) If a vehicle is not reclaimed as provided in 61-12-403 within 30 days after notification by registered or certified mail or prescribed publication, the sheriff of the county in which it is located at the time it was taken into custody shall sell it at public auction in the manner provided in 25-13-701 through 25-13-709.

(2) After any vehicle has been so sold, the former owner or person entitled to possession has no further right, title, claim, or interest in or to the vehicle.

History: En. Sec. 5, Ch. 288, L. 1967; R.C.M. 1947, 53-905.

61-12-405. Certificate of sale. (1) When any vehicle is so sold, the sheriff at the time of the payment of the purchase price shall execute a certificate of sale in duplicate. He shall deliver the original certificate to the purchaser and retain the copy.

(2) The certificate of sale shall contain the name and address of the purchaser, the date of sale, the consideration paid, a description of the vehicle, and a stipulation that no warranty is made as to the condition or title of the vehicle.

History: En. Sec. 6, Ch. 288, L. 1967; R.C.M. 1947, 53-906.

61-12-406. Issuing certificate of ownership. The division shall issue a certificate of ownership upon presentation by the purchaser of the certificate of sale and payment of the fees required by law.

History: En. Sec. 7, Ch. 288, L. 1967; R.C.M. 1947, 53-907.

61-12-407. Transmitting return of sale and balance of proceeds. (1) When any vehicle is sold as provided in 61-12-404 the sheriff shall transmit to the division and to the county treasurer a return of sale setting forth a description of the vehicle, the purchase price, the name and address of the purchaser, the costs incurred in the sale, and the costs and expenses incurred in the removal, preservation, and custody of the vehicle.

(2) With the return of sale, the sheriff shall transmit to the county treasurer the balance of the proceeds of the sale after deducting the costs incurred in the sale and the costs and expenses incurred in the removal, preservation, and custody of the vehicle.

(3) Upon receipt of the return of sale and such balance the county treasurer shall file the return in his office and deposit the balance in the county road fund on all vehicles seized by the sheriff or highway patrol. The county treasurer shall transmit to the city treasurer the balance of the proceeds of the sale after deducting the costs incurred in the sale and the costs and expenses incurred in the removal, preservation, and custody of vehicles seized by city police, and the city treasurer shall deposit such proceeds in the city street fund.

History: En. Sec. 8, Ch. 288, L. 1967; R.C.M. 1947, 53-908.

61-12-408. Penalty. Any person or persons violating the provisions of this part shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $25 or more than $300 or by imprisonment in the county jail for not less than 5 days or more than 90 days or by both fine and imprisonment.

History: En. Sec. 9, Ch. 288, L. 1967; R.C.M. 1947, 53-909(part).

Part 5

Identification Cards

61-12-501. Authority of division of motor vehicles to issue identification cards. The division is hereby authorized to issue identification cards to any person over the age of 18 years not the holder of a valid driver's license.

History: En. Sec. 1, Ch. 53, L. 1971; R.C.M. 1947, 31-170.

61-12-502. Rules for identification cards. The division shall formulate and adopt reasonable rules for the application for and issuing of identification cards and cancellation thereof and shall require the furnishing of such information necessary for the purpose of this part.

History: En. Sec. 2, Ch. 53, L. 1971; R.C.M. 1947, 31-171; amd. Sec. 93, Ch. 421, L. 1979.

61-12-503. Agents for issuance of identification cards. The division shall have authority to appoint county treasurers and other qualified officers to act as its agents for the issuance of such identification cards.

History: En. Sec. 4, Ch. 53, L. 1971; R.C.M. 1947, 31-173.

61-12-504. Fees for identification cards. Fees not in excess of $1 for such identification cards shall be collected and credited to a revolving fund which shall be known as the Montana highway patrol identification card fund. Such fund shall be used by the division to defray the cost of issuing identification cards.

History: En. Sec. 5, Ch. 53, L. 1971; R.C.M. 1947, 31-174.

Part 6

Jurisdiction Over Minors

61-12-601. Unlawful operation by minor — jurisdiction of courts — penalties. (1) The district courts and the justices' courts of the state and the municipal and city courts of cities and towns shall have concurrent original jurisdiction in all proceedings concerning the unlawful operation of motor vehicles by children under the age of 18 years.

(2) Whenever, after a hearing before the court, it shall be found that a child under the age of 18 years has unlawfully operated a motor vehicle, the court may:

(a) impose a fine, not exceeding $50, provided such child shall not be imprisoned for failure to pay such fine;

(b) revoke the driver's license of such child, or suspend the same for such time as may be fixed by the court; and

(c) order any motor vehicle owned or operated by such child to be impounded by the probation officer for such time, not exceeding 60 days, as shall be fixed by the court. However, if the court shall find that the operation of such motor vehicle was without the consent of the owner, then such vehicle shall not be impounded.

(3) Upon nonpayment of any fine herein provided for, the court may order that any motor vehicle owned by said child or operated by said child with the consent of the owner shall be impounded until the fine shall be paid, or may order that the driver's license of such child shall be taken up and held by the probation officer until payment of said fine, or may cause both said motor vehicle and said driver's license to be taken up and impounded until such fine shall be paid; but no child shall be committed to or held in any detention facility or jail by reason of nonpayment of such fine.

History: En. Sec. 1, Ch. 215, L. 1959; amd. Sec. 1, Ch. 188, L. 1963; R.C.M. 1947, 32-21-163.

61-12-602. Summons — issuing to minor. Whenever any child under the age of 18 years shall unlawfully operate a motor vehicle in the presence of any peace officer of any county, city, or town, or in the presence of any state highway patrolman, such officer may deliver to said child a form of summons describing the nature of the offense, with instructions thereon to report to the district court or a justice's court of the county or the municipal or city court of the city or town wherein the offense occurs; and the court shall be informed thereof by the delivery of a copy of said summons to the probation officer, who shall in turn deliver the same to the judge or justice of the peace.

History: En. Sec. 2, Ch. 215, L. 1959; amd. Sec. 2, Ch. 188, L. 1963; R.C.M. 1947, 32-21-164.

61-12-603. Authority of court upon learning of unlawful operation by minor. Whenever the court shall be informed that a child has unlawfully operated a motor vehicle said child shall be required to appear before the court and the court shall, after a hearing and investigation, take action as provided in 61-12-601, or may dismiss the proceeding if it be found and determined that it is for the best interests of the child so to do.

History: En. Sec. 3, Ch. 215, L. 1959; R.C.M. 1947, 32-21-165.

Part 7

Disposition of Fines

61-12-701. Highway patrol — disposition of fines and forfeitures. (1) All fines and forfeitures collected in any court from persons apprehended or arrested by patrolmen for violation of the laws and regulations relating to the use of state highways and the operation of vehicles thereon must be paid to the state treasurer and by him credited to the general fund of the state, except for that portion of the fines otherwise allocated by law which shall be paid into the appropriate accounts in the earmarked revenue fund.

(2) At the time of payment of any such fine or forfeiture, there shall be filed with the state treasurer a complete statement showing the total of the fines or forfeitures received or incurred, which statement shall give the title of the court and cause and be subscribed to by the person or officer making the payments.

History: En. Sec. 14, Ch. 199, L. 1943; amd. Sec. 10, Ch. 226, L. 1965; amd. Sec. 9, Ch. 214, L. 1969; R.C.M. 1947, 31-114; amd. Sec. 94, Ch. 421, L. 1979.

61-12-702. Court costs — fees and expenses of counties. The court, after deducting all costs and fees, shall immediately transmit the balance of said fine to the state treasurer as provided by law. The expenses of the county, except fees of officers who are paid a regular salary, shall constitute a proper claim against the state of Montana and said claim or claims shall be paid in the manner provided by law out of the funds appropriated for such purposes.

History: En. Sec. 15, Ch. 199, L. 1943; R.C.M. 1947, 31-115.

61-12-703. Disposition of traffic fines collected from juveniles. All fines collected by the district courts from persons under 18 years of age as the result of traffic summonses for unlawful operation of motor vehicles issued by peace officers of cities or counties or by highway patrolmen, together with the percentage of the fines otherwise deductible by law, shall be retained by the county treasurer of the county in which the offense occurred and at the end of each month distributed as follows:

(1) Fines collected as the result of summonses issued by city peace officers shall be distributed to the city in which the peace officer is employed and credited to the city general fund.

(2) Fines collected as the result of summonses issued by county peace officers shall be retained by the county treasurer and credited to the county road fund.

(3) Fines collected as the result of summonses issued by state highway patrolmen shall be paid to the state treasurer, who shall credit them to the general fund of the state.

(4) That portion of the fines deductible by law shall be paid to the state treasurer, who shall credit the money to the appropriate accounts in the earmarked revenue fund.

History: En. 95-2229 by Sec. 11, Ch. 513, L. 1973; amd. Sec. 40, Ch. 184, L. 1977; R.C.M. 1947, 95-2229; amd. Sec. 95, Ch. 421, L. 1979.

TITLE 62 - 66

RESERVED

TITLE 67

AERONAUTICS

Ch.
1. General Provisions.
2. Department of Community Affairs — Aeronautical Powers and Duties.
3. Regulation and Licensing.
4. Noise, Height, and Land Use Regulation.
5. Airport Hazard Regulation.
6. Airport Zoning Act.
Chapters 7 through 9 reserved.
10. Municipal Airports.
11. Airport Authorities.

CHAPTER 1

GENERAL PROVISIONS

Part 1 — Definitions and Policy

Section
67-1-101. Definitions.
67-1-102. Policy.
67-1-103. Board of aeronautics.
67-1-104. Governmental nature of aeronautical functions.
67-1-105. Penalties.

Part 2 — Uniform Principles

67-1-201. Short title.
67-1-202. State sovereignty in space.
67-1-203. Spatial ownership.
67-1-204. Lawfulness of flight and landings.
67-1-205. Penalties.
67-1-206. Interpretation.

Part 3 — Finance

67-1-301. Money — receipt and disbursement.
67-1-302. Industrial revenue projects.
67-1-303. Airline property tax — state airports.

Chapter Compiler's Comments

Transfer of Function: Section 6, Ch. 274, L. 1981, provided in part: "(1) The department of community affairs is abolished.

(2) The following functions of the department of community affairs are transferred to the department of commerce: . . .

(c) relating to aviation and contained in 15-70-204, 15-70-221, Title 67, and 80-8-204; . . ."

Part 1

Definitions and Policy

67-1-101. Definitions. Unless the context requires otherwise, in this title the following definitions apply:

(1) "Aeronautics" means transportation by aircraft; the operation, construction, repair, or maintenance of aircraft, aircraft power plants and accessories, including the repair, packing, and maintenance of parachutes; the design, establishment, construction, extension, operation, improvement, repair, or maintenance of airports, restricted landing areas, or other air navigation facilities; and air instruction.

(2) "Aeronautics instructor" means an individual engaged in giving instruction or offering to give instruction in aeronautics, either in flying or ground subjects, or both, for hire or reward, without advertising that occupation, without calling his facilities an "air school" or anything equivalent to an "air school", and without employing or using other instructors. It does not include an instructor in a public school or university of this state or an institution of higher learning accredited and approved for carrying on collegiate work while engaged in his duties as an instructor.

(3) "Air carrier" means a person or corporation owning, controlling, operating, or managing aircraft as a scheduled common carrier of passengers or freight for compensation within this state.

(4) "Aircraft" means a contrivance used or designed for navigation of or flight in the air.

(5) "Air instruction" means the imparting of aeronautical information by an aeronautics instructor or in or by an air school or flying club.

(6) "Airman" means an individual who engages, as the person in command or as pilot, mechanic, or member of the crew, in the navigation of aircraft while under way; an individual who is directly in charge of the inspection, maintenance, overhauling, or repair of aircraft engines, propellers, or appliances (excepting individuals employed outside the United States, an individual employed by a manufacturer of aircraft, aircraft engines, propellers, or appliances to perform duties as inspector or mechanic in connection with them, and an individual performing inspection or mechanical duties in connection with aircraft owned or operated by him) and an individual who serves in the capacity of aircraft dispatcher or air traffic control tower operator.

(7) "Air navigation" means the operation or navigation of aircraft in the air space over this state or upon an airport or restricted landing area within this state.

(8) "Air navigation facility" means a facility used in, available for use in, or designed for use in aid of air navigation, including airports, restricted landing areas, and structures, mechanisms, lights, beacons, marks, communicating systems, or other instrumentalities or devices used or useful as an aid or constituting an advantage or convenience to the safe taking off, navigation, and landing of aircraft or the safe and efficient operation or maintenance of an airport or restricted area and any combination of these facilities.

(9) "Airport" means an area of land or water, except a restricted landing area, which is designed for the landing and takeoff of aircraft, whether or not facilities are provided for the shelter, servicing, or repair of aircraft or for receiving or discharging passengers or cargo, and all appurtenant areas used or suitable for airport buildings or other airport facilities and all appurtenant rights-of-way.

(10) "Airport and landing field" means any area of land, water, or both, which is used or is made available for the landing and takeoff of aircraft,

owned, leased, controlled, operated, or maintained by the United States, the state of Montana, any county thereof or any municipality, or any of the authorized agencies or branches thereof within the state of Montana.

(11) "Airport authority" or "authority" means a regional airport authority or municipal airport authority created under chapter 11 and the governing body of a municipality which has determined to exercise the powers of a municipal airport authority under 67-11-102.

(12) "Airport hazard" means a structure, object of natural growth, or use of land which obstructs the air space required for the flight of aircraft in landing or taking off at an airport or restricted landing area or is otherwise hazardous to landing or taking off.

(13) "Airport hazard area" means any area of land or water upon which an airport hazard might be established if not prevented as provided in this title.

(14) "Airport protection privileges" means easements through or other interests in air space over land or water, interests in airport hazards outside the boundaries of airports or restricted landing areas, and other protection privileges, the acquisition or control of which is necessary to ensure safe approaches to the landing areas of airports and restricted landing areas and the safe and efficient operation thereof.

(15) "Air school" means a person engaged in giving or offering to give instruction in aeronautics, either in flying or ground subjects, or both, for or without hire or reward, and advertising, representing, or holding himself out as giving or offering to give that instruction. It does not include a public school or university of this state or an institution of higher learning accredited and approved for carrying on collegiate work.

(16) "Board" means the board of aeronautics provided for in 2-15-1812.

(17) "Bonds" means bonds, notes, interim certificates, debentures, or similar obligations issued by an authority under chapter 11.

(18) "Building or structure" means any edifice, structure, or construction of any kind, character, or description and any object of natural growth erected, constructed, grown, located or proposed to be erected, constructed, grown, or located within the area described in 67-5-201 hereof as safety zones, including any edifice, structure, or construction or object within said restricted zones erected, constructed, placed, or located on or over land or water, or both.

(19) "Civil aircraft" means an aircraft other than a public aircraft.

(20) "Commercial air operator" means any person owning, controlling, operating, or managing aircraft for any commercial purpose for compensation.

(21) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(22) "Established perimeter of an airport or landing field", for the purposes of computing all distances and elevations as contemplated by chapter 5, shall be the metes and bounds and elevations along the respective sides thereof as determined by the United States government, the state of Montana, the several counties, the several municipalities, or other public authority owning, leasing, controlling, operating, or maintaining such airport or landing field, the determination and definition to be evidenced by plat showing the metes, bounds, and elevations to be filed in and among the records

of said public authority for official purposes and subject to inspection and examination at all reasonable times by any interested persons.

(23) "Flying club" means a person other than an individual which, neither for profit nor reward, owns, leases, or uses one or more aircraft for the purpose of instruction or pleasure, or both.

(24) "Governing body" means bodies and boards by whatever names they are known having charge of finances and management of a municipality.

(25) "Height of buildings and structures" means, for the purposes of chapter 5, the vertical distance measured from the ground or surface level of the airport or landing field on the side adjacent to the said building or structure to the level of the highest point of the building or structure.

(26) "Municipal airport authority" or "municipal authority" means a municipal airport authority created under 67-11-102.

(27) "Municipality" or "political subdivision" means a county, city, village, or town of this state and any other political subdivision, public corporation, authority, or district in this state authorized by law to acquire, establish, construct, maintain, improve, and operate airports and other air navigation facilities.

(28) "Navigable air space" means air space above the minimum altitudes of flight prescribed by the laws of this state or by regulations of the department.

(29) "Operation of aircraft" or "operate aircraft" means the use of aircraft for the purpose of air navigation and includes the navigation or piloting of aircraft. A person who causes or authorizes the operation of aircraft, whether with or without the right of legal control (in the capacity of owner, lessee, or otherwise) of the aircraft, operates the aircraft.

(30) "Person" means an individual, firm, partnership, corporation (private, municipal, or public), company, association, joint-stock association, or body politic and includes a trustee, receiver, assignee, or other similar representative.

(31) "Public aircraft" means an aircraft used exclusively in the service of any government or of a political subdivision of a government, including the government of a state, territory, or possession of the United States, or the District of Columbia but not including a government-owned aircraft engaged in carrying persons or property for commercial purposes.

(32) "Real property" means lands, structures, buildings, and interests in land, including lands under water and riparian rights, and all things and rights usually included within the term real property, including not only fee simple absolute but also all lesser interests, such as easements, rights-of-way, uses, leases, licenses, and all other incorporeal hereditaments and every estate, interest, or right, legal or equitable, pertaining to real property.

(33) "Regional airport authority" or "regional authority" means a regional airport authority created under 67-11-103.

(34) "Restricted landing area" means an area of land, water, or both, which is used or is made available for the landing and takeoff of aircraft, the use of which shall, except in case of emergency, be only as provided by the department.

(35) "State airway" means a route in the navigable air space over and above the lands or waters of this state, designated by the department as a route suitable for air navigation.

(36) "Structure" means any object constructed or installed by man, including, but without limitation, buildings, towers, smokestacks, and overhead transmission lines.

(37) "Tree" means any object of natural growth.

History: **Ap. p. Sec. 3, Ch. 152, L. 1945; amd. Sec. 2, Ch. 348, L. 1974; amd. Sec. 2, Ch. 213, L. 1975; Sec. 1-102, R.C.M. 1947; Ap. p. Sec. 1, Ch. 122, L. 1967; amd. Sec. 18, Ch. 348, L. 1974; Sec. 1-311, R.C.M. 1947; Ap. p. Sec. 26, Ch. 348, L. 1974; Sec. 1-322.1, R.C.M. 1947; Ap. p. Sec. 6, Ch. 12, L. 1939; Sec. 1-706, R.C.M. 1947; Ap. p. Sec. 1, Ch. 287, L. 1947; amd. Sec. 38, Ch. 348, L. 1974; Sec. 1-710, R.C.M. 1947; Ap. p. Sec. 1, Ch. 433, L. 1971; amd. Sec. 42, Ch. 348, L. 1974; Sec. 1-901, R.C.M. 1947; R.C.M. 1947, 1-102, 1-311, 1-322.1(2), (3), 1-706(a) thru (d), 1-710(2) thru (4), 1-901(2) thru (7); amd. Sec. 6, Ch. 274, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of community affairs" in (21); changed internal references to the department; changed internal reference to the board in (16).

67-1-102. Policy. It is hereby declared that the purpose of this title is to further the public interest and aeronautical progress by:

(1) providing for the protection and promotion of safety in aeronautics;

(2) cooperating in effecting a uniformity of the laws relating to the development and regulation of aeronautics in the several states;

(3) revising existing statutes relative to the development and regulation of aeronautics so as to grant to a state agency such powers and impose upon it such duties that the state may properly perform its functions relative to aeronautics and effectively exercise its jurisdiction over persons and property within such jurisdiction, may assist in the promotion of a statewide system of airports, may cooperate with and assist the political subdivisions of this state and others engaged in aeronautics, and may encourage and develop aeronautics;

(4) establishing uniform regulations, consistent with federal regulations and those of other states, in order that those engaged in aeronautics of every character may so engage with the least possible restriction, consistent with the safety and the rights of others; and

(5) providing for cooperation with the federal authorities in the development of a national system of civil aviation and for coordination of the aeronautical activities of those authorities and the authorities of this state by assisting in accomplishing the purposes of federal legislation and eliminating costly and unnecessary duplication of functions.

History: **En. Sec. 3, Ch. 152, L. 1945; R.C.M. 1947, 1-103.**

67-1-103. Board of aeronautics. (1) The board shall act in an advisory capacity to the department in matters pertaining to aeronautics.

(2) Regular meetings shall be held at the board's offices at Helena, but whenever the convenience of the public or of the parties may be promoted or delay or expense may be prevented, it may hold hearings or proceedings at any other place designated by it.

History: **(1)En. Sec. 2, Ch. 171, L. 1967; amd. Sec. 27, Ch. 348, L. 1974; Sec. 1-323, R.C.M. 1947; (2)En. Sec. 6, Ch. 152, L. 1945; amd. Sec. 3, Ch. 348, L. 1974; Sec. 1-203, R.C.M. 1947; R.C.M. 1947, 1-203, 1-323(2).**

67-1-104. Governmental nature of aeronautical functions. The acquisition of lands for establishing airports or other air navigation facilities; the acquisition of airport protection privileges; the acquisition, establishment, construction, enlargement, improvement, maintenance, equipment, and operation of airports and other air navigation facilities, whether by the state separately or jointly with a municipality; the assistance of this state in that acquisition, establishment, construction, enlargement, improvement, maintenance, equipment, and operation; and the exercise of any other powers granted to the department are public and governmental functions exercised for a public purpose and as a matter of public necessity; and such lands and other property and privileges acquired and used by the state in the manner and for the purposes enumerated in this title are acquired and used for public and governmental purposes and as a matter of public necessity.

History: En. Sec. 21, Ch. 152, L. 1945; amd. Sec. 37, Ch. 348, L. 1974; amd. Sec. 2, Ch. 232, L. 1977; amd. Sec. 1, Ch. 234, L. 1977; R.C.M. 1947, 1-502.

67-1-105. Penalties. Unless otherwise provided, any person violating any of the provisions of chapters 1 through 3 or any of the rules or orders issued pursuant thereto is guilty of a misdemeanor and punishable by a fine of not more than $500 or by imprisonment in a county jail for not more than 90 days, or both.

History: En. Sec. 22, Ch. 152, L. 1945; R.C.M. 1947, 1-503; amd. Sec. 1, Ch. 140, L. 1979.

Part 2

Uniform Principles

67-1-201. Short title. This part may be cited as the "Uniform State Law for Aeronautics".

History: En. Sec. 10, Ch. 17, L. 1929; re-en. Sec. 2736.10, R.C.M. 1935; R.C.M. 1947, 1-606.

67-1-202. State sovereignty in space. Sovereignty in the space above the lands and waters of this state is declared to rest in the state, except where assumed by the United States law.

History: En. Sec. 5, Ch. 17, L. 1929; re-en. Sec. 2736.5, R.C.M. 1935; R.C.M. 1947, 1-601.

67-1-203. Spatial ownership. The ownership of the space above the lands and waters of this state is declared to be vested in the several owners of the surface beneath, subject to the right of flight described in 67-1-204.

History: En. Sec. 6, Ch. 17, L. 1929; re-en. Sec. 2736.6, R.C.M. 1935; R.C.M. 1947, 1-602.

67-1-204. Lawfulness of flight and landings. (1) Flight in aircraft over the lands and waters of this state is lawful, unless at such a low altitude as to interfere with the then-existing use to which the land or water or the space over the land or water is put by the owner or unless so conducted as to be imminently dangerous to persons or property lawfully on the land or water or in violation of the air commerce regulations which have been or may be promulgated by the department of commerce of the United States.

(2) No person shall operate an aircraft, as pilot thereof, either in the air or on the ground, in a careless or reckless manner so as to endanger the life or property of others, including the aircraft being operated and passengers carried therein.

(3) The willful and malicious use of aircraft in stunting or diving over livestock in a manner calculated to frighten or stampede them shall be

deemed an unlawful use thereof, and actual and punitive damages, in addition to the penalties provided by this part, may be recovered in an action for damages caused therefrom.

(4) The landing of an aircraft on the lands or waters of another without his consent is unlawful, except in the case of a forced landing. For damages caused by a forced landing, however, the owner or lessee of the aircraft or the pilot shall be liable for actual damage caused by such forced landing.

History: **En. Sec. 7, Ch. 17, L. 1929; re-en. Sec. 2736.7, R.C.M. 1935; amd. Sec. 1, Ch. 109, L. 1939; amd. Sec. 1, Ch. 16, L. 1949; amd. Sec. 1, Ch. 102, L. 1963; R.C.M. 1947, 1-603.**

67-1-205. Penalties. A person who violates any provision of this part shall be guilty of a misdemeanor and punishable by a fine of not more than $500 or by imprisonment for not more than 6 months, or both.

History: **En. Sec. 8, Ch. 17, L. 1929; re-en. Sec. 2736.8, R.C.M. 1935; R.C.M. 1947, 1-604.**

67-1-206. Interpretation. This part shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it and to harmonize, as far as possible, with federal laws and regulations on the subject of aeronautics.

History: **En. Sec. 9, Ch. 17, L. 1929; re-en. Sec. 2736.9, R.C.M. 1935; R.C.M. 1947, 1-605.**

Part 3

Finance

67-1-301. Money — receipt and disbursement. (1) All costs and expenses of administering this title, including the salaries of employees of the department engaged in functions pertaining to aeronautics, the expenses of members of the board, and all other disbursements necessary to carry out the purposes of this title, shall be paid out of the following revenues:

(a) all gifts and all legislative appropriations to the department for aeronautics;

(b) all moneys received from any branch or department of the federal government or from other sources for the purposes mentioned in this title or for the furtherance of aeronautics generally in this state.

(2) All such moneys shall be deposited in the state treasury to the credit of the department.

(3) There shall be deposited in the earmarked revenue fund to the credit of the department the proceeds of 1 cent per gallon out of the amount per gallon of gasoline license tax imposed by the laws of this state upon purchases of gasoline used for the operation of aircraft. Moneys so deposited shall be spent by the department for the sole purpose of carrying out its functions pertaining to aeronautics.

(4) No part of the 1 cent per gallon of gasoline license tax imposed by the laws of this state on gasoline purchased and used for the operation of airplanes or aircraft may be refunded.

History: **En. Sec. 20, Ch. 152, L. 1945; amd. Sec. 1, Ch. 120, L. 1949; amd. Sec. 220, Ch. 147, L. 1963; amd. Sec. 36, Ch. 348, L. 1974; amd. Sec. 3, Ch. 213, L. 1975; R.C.M. 1947, 1-501.**

67-1-302. Industrial revenue projects. The board of aeronautics may exercise the power and authority of a municipality under Title 90, chapter 5, part 1, with respect to projects suitable for use by commercial enterprises providing scheduled air transportation services primarily within the state if such projects are located within or based and used primarily within the state. For purposes of this section, the board of aeronautics shall be considered a municipality and a governing body thereof under Title 90, chapter 5, part 1, and shall give notice of the public hearing required by 90-5-104 in three newspapers published and circulating generally in the state and shall not issue any bonds unless it appears, after the public hearing, that the acquisition or improvements of the project is in the public interest of the state. For purposes of this section, projects suitable for commercial enterprises providing scheduled air transportation services shall include but are not limited to aircraft parts, aircraft, hangars, storage and aircraft maintenance facilities, fuel facilities, and other personal or real property suitable for use by a scheduled air transportation enterprise.

History: En. Sec. 8, Ch. 656, L. 1979.

67-1-303. Airline property tax — state airports. (1) Within 30 days of receipt, the county treasurer shall transmit to the state treasury 90% of the property tax collected on property of airline companies by reason of a state airport being located in the county.

(2) The state treasurer shall place the money in the earmarked revenue fund to the credit of the department of commerce for the purposes provided for in 67-1-301.

History: En. Sec. 2, Ch. 238, L. 1981; amd. Sec. 6, Ch. 274, L. 1981.

Compiler's Comments

Function of Department of Commerce: The reference to the department of commerce in (2) was changed from the department of community affairs pursuant to the transfer of functions in Title 76 provided in subsection (2)(c) of sec. 6, Ch. 274, L. 1981.

Codification Instruction: Section 3, Ch. 238, L. 1981, provided: "Section 2 is intended to be codified as an integral part of Title 67, chapter 1, part 3, and the provisions of Title 67, chapter 1, part 3, apply to section 2."

Cross-References

Statement of assessed value transmitted to counties, 15-23-106.

CHAPTER 2

DEPARTMENT OF COMMUNITY AFFAIRS AERONAUTICAL POWERS AND DUTIES

Part 1 — General Powers

Section

67-2-101. Aeronautical powers and duties of department.
67-2-102. Rules, orders, and standards.

Part 2 — State Aircraft

(Repealed. Sec. 4, Ch. 23, L. 1981;
Sec. 22, Ch. 274, L. 1981)

Part 3 — State Airports

67-2-301. State airports — acquisition.
67-2-302. State airports — operation.

Part 4 — Intergovernmental Cooperation

67-2-401. Cooperation — federal government.

67-2-402. Cooperation — municipalities.
67-2-403. Federal aid.

Part 5 — Enforcement

67-2-501. Enforcement.
67-2-502. Investigations and hearings.
67-2-503. Use of reports.

Part 1

General Powers

67-2-101. Aeronautical powers and duties of department. (1) The department shall supervise aeronautics within this state. It shall encourage, foster, and assist in the development of aeronautics and encourage the establishment of airports and other air navigation facilities.

(2) The department shall cooperate with and assist the federal government, the political subdivisions of this state, and others engaged in aeronautics or the promotion of aeronautics and shall coordinate the aeronautical activities of these bodies.

(3) The department may designate, design, and establish, expand, or modify a state airways system which will best serve the interests of the state. It may chart that airways system and arrange for publication and distribution of maps, charts, notices, and bulletins relating to the airways which may be required in the public interest. The system shall be supplementary to and coordinated in design and operation with the federal airways system. It may include all types of air navigation facilities, but the facilities must conform to federal safety standards.

(4) The department may draft and recommend necessary legislation to advance the interests of the state in aeronautics and represent the state in aeronautical matters before federal agencies and other state agencies.

(5) The department may participate as party plaintiff or defendant or as intervenor on behalf of the state or a municipality or citizen in a controversy involving any claimed encroachment by the federal government or any foreign state upon state or individual rights pertaining to aeronautics.

(6) The department may use the facilities and services of other agencies of the state when reasonably available.

(7) The department may enter into any contracts necessary to the execution of the powers granted the department by this title.

(8) The department shall grant no exclusive right for the use of an airway, airport, restricted landing area, or other air navigation facility under its jurisdiction. This subsection does not prevent the making of leases in accordance with other provisions of this title.

History: En. Sec. 7, Ch. 152, L. 1945; amd. Sec. 4, Ch. 348, L. 1974; R.C.M. 1947, 1-204.

67-2-102. Rules, orders, and standards. (1) The department may perform acts; issue and amend orders; adopt reasonable, general, or special rules; and establish minimum standards, consistent with this title, as it considers necessary to:

(a) carry out this title;

(b) perform its duties for the purpose of protecting and ensuring the general public interest and safety, the safety of persons receiving instruction concerning (or operating, using, or traveling in) aircraft, and of persons and property on land or water; and

(c) develop and promote aeronautics in this state.

(2) All rules prescribed by the department under this title shall be kept in conformity, as nearly as may be, with the then-current federal legislation governing aeronautics and the rules and standards adopted or issued under federal legislation.

History: En. 1-204.2 by Sec. 6, Ch. 348, L. 1974; R.C.M. 1947, 1-204.2.

Part 2

State Aircraft (Repealed. Sec. 4, Ch. 23, L. 1981; Sec. 22, Ch. 274, L. 1981)

Part Compiler's Comments

Histories of Repealed Sections:

67-2-201. En. 1-1101 by Sec. 1, Ch. 378, L. 1974; amd. Sec. 4, Ch. 213, L. 1975; amd. Sec. 9, Ch. 232, L. 1977; R.C.M. 1947, 1-1101.

67-2-202. En. 1-1102 by Sec. 2, Ch. 378, L. 1974; amd. Sec. 5, Ch. 213, L. 1975; R.C.M. 1947, 1-1102.

67-2-203. En. 1-1103 by Sec. 3, Ch. 378, L. 1974; amd. Sec. 6, Ch. 213, L. 1975; R.C.M. 1947, 1-1103.

67-2-204. En. 1-1104 by Sec. 4, Ch. 378, L. 1974; R.C.M. 1947, 1-1104.

67-2-205. En. 1-1105 by Sec. 5, Ch. 378, L. 1974; R.C.M. 1947, 1-1105(part).

Disposal of Airplanes, Hangars, and Cash Balances: Section 1, Ch. 23, L. 1981, provided: "The department of community affairs shall:

(1) convey to the department of fish, wildlife, and parks the special-use Cessna 180 airplane and two hangars, all of which were acquired under House Bill 921, Laws of 1979, for the consideration of $61,774, less depreciation since June, 1979, such funds to be deposited in the general fund;

(2) convey to the department of highways the hangar acquired under House Bill 921, Laws of 1979, for a consideration of $61,230, less depreciation since June, 1979, such funds to be deposited in the general fund;

(3) convey to the office of the governor the twin-engine, pressurized-cabin airplane known as the Duke;

(4) convey to the aeronautics division of the department of community affairs the Bonanza heretofore part of the state airplane pool, and $38,888 from the airplane capital replacement account;

(5) convey to the department of natural resources the regular Cessna 180, serial number 18052167; and

(6) deposit all remaining cash from operations and capital replacement accounts into the general fund after airpool debts, excluding the loan to the aviation fuel tax earmarked revenue account, are paid."

Appropriating Funds to Repay the State Airplane Pool Loan: Section 2, Ch. 23, L. 1981, provided: "General fund of $158,039 is appropriated to repay the airpool loan from the aviation fuel tax earmarked revenue account of the aeronautics division within the department of community affairs."

Appropriating Travel Money to the Governor's Office: Section 3, Ch. 23, L. 1981, provided: "General fund of $45,000 is appropriated to the governor's office to pay for maintenance, Duke loan payments, one pilot, and related travel costs of operating the Duke for the remainder of fiscal 1981."

Effective Date: Section 5, Ch. 23, L. 1981, provided: "This bill is effective on passage and approval." Approved February 27, 1981.

Part 3

State Airports

67-2-301. State airports — acquisition. (1) The department may, on behalf of and in the name of this state:

(a) acquire real or personal property by purchase, gift, devise, lease, condemnation proceedings, or otherwise for the purpose of establishing and constructing airports, restricted landing areas, and other air navigation facilities;

(b) acquire in like manner, own, control, establish, construct, enlarge, improve, maintain, equip, operate, regulate, and police airports, restricted landing areas, and other air navigation facilities either within or outside this state;

(c) prior to acquisition, make investigations, surveys, and plans;

(d) erect, install, construct, and maintain facilities at those airports for the servicing of aircraft and for the comfort and accommodation of air travelers; and

(e) dispose of any property, airport, restricted landing area, or any other air navigation facility by sale, lease, or otherwise in accordance with the laws of this state governing the disposition of other like property of the state.

(2) The department may not, however, acquire or take over an airport, restricted landing area, or other air navigation facility owned or controlled by a municipality of this state without the consent of the municipality. The department may erect, equip, operate, and maintain on an airport, buildings and equipment necessary and proper to establish, maintain, and conduct the airport and air navigation facilities connected with it.

(3) Where necessary, in order to provide unobstructed air space for the landing and taking off of aircraft utilizing airports and restricted landing areas acquired or operated under the provisions of this title, the department may acquire, in the manner provided for the acquisition of property for airport purposes, easements through or other interests in air space over land or water, interests in airport hazards outside the boundaries of the airports or restricted landing areas, and such other airport protection privileges as are necessary to ensure safe approaches to the landing areas of airports and restricted landing areas and the safe and efficient operation of them. The department may also acquire in the same manner the right or easement, for a term of years or perpetually, to place or maintain suitable marks for the daytime marking and suitable lights for the nighttime marking of airport hazards, including the right of ingress and egress to or from the airport hazards for the purpose of maintaining and repairing the lights and marks. This authority does not limit the right, power, or authority of the state or a municipality to zone property adjacent to an airport or restricted landing area pursuant to a law of this state.

(4) The department may engage in all those activities jointly with the United States, other states, and with municipalities or other agencies of this state.

(5) For the purpose of acquiring any property which it is authorized to acquire, the department may exercise the right of eminent domain, in the name of the state, in the manner provided by the laws of this state for the acquisition of real property for public purposes. The acquisition of property for any of those purposes is a public use.

History: **En. Sec. 19, Ch. 152, L. 1945; amd. Sec. 35, Ch. 348, L. 1974; amd. Sec. 1, Ch. 232, L. 1977; R.C.M. 1947, 1-401(1) thru (5).**

67-2-302. State airports — operation. (1) The department may:

(a) lease, for a term not exceeding 10 years, airports or other air navigation facilities or real property acquired or set apart for airport purposes to private parties, a municipal or state government or the national government, or a department of either of them, for operation;

(b) lease or assign, for a term not exceeding 10 years, space, area, improvements, or equipment on those airports to private parties, a municipal or state government or the national government, or a department of either for operation or use consistent with the purposes of this title;

(c) sell any part of those airports, other air navigation facilities, or real property to a municipal or state government or to the United States or a department or instrumentality thereof for aeronautical purposes or purposes incidental thereto; and

(d) confer the privilege of concessions for supplying goods, commodities, things, services, and facilities upon the premises of those airports. However, in so doing the public may not be deprived of its rightful, equal, and uniform use thereof.

(2) It may determine the charges or rental for the use of state airports, the charges for service or accommodations under its control, and the terms and conditions under which the properties may be used. However, the public may not be deprived of its rightful, equal, and uniform use of the property. Charges shall be reasonable and uniform for the same class of service and established with due regard to the property and improvements used and the expenses of operation to the state.

(3) The state has, and the department may enforce, agisters' liens as provided by law for repair, improvement, storage, or care of any personal property.

(4) The department may employ persons or contract with persons or firms to provide law enforcement in and around state airports whenever required by federal aviation regulations.

History: En. Sec. 19, Ch. 152, L. 1945; amd. Sec. 35, Ch. 348, L. 1974; amd. Sec. 1, Ch. 232, L. 1977; R.C.M. 1947, 1-401(6), (7); amd. Sec. 1, Ch. 192, L. 1981.

Compiler's Comments

1981 Amendment: Added subsection (4) relating to law enforcement in and around state airports.

Part 4

Intergovernmental Cooperation

67-2-401. Cooperation — federal government. (1) The department may confer with or hold joint hearings with any federal aeronautical agency in connection with any matter arising under this title or relating to the sound development of aeronautics and may avail itself of the cooperation, services, records, and facilities of federal agencies, as fully as practicable, in the administration and enforcement of this title. It shall reciprocate by furnishing to the federal agencies its cooperation, services, records, and facilities to the extent practicable.

(2) It shall report to the appropriate federal agency all accidents in aeronautics in this state of which it is informed and preserve, protect, and prevent the removal of the component parts of any aircraft involved in an accident being investigated by it until a federal agency begins an investigation. It shall report to the appropriate federal agency all refusals by it to

register federal licenses, certificates, or permits; all revocations of certificates of registration; the reasons for its action; and all penalties of which it has knowledge imposed upon airmen for violations of the laws of this state relating to aeronautics or for violations of the rules or orders of the department.

History: En. 1-204.1 by Sec. 5, Ch. 348, L. 1974; R.C.M. 1947, 1-204.1.

67-2-402. Cooperation — municipalities. (1) The department may offer its engineering or other technical services, without charge, to a municipality desiring them in connection with the construction, maintenance, or operation or proposed construction, maintenance, or operation of an airport or restricted landing area.

(2) The department may render assistance in the acquisition, development, operation, or maintenance of airports owned, controlled, or operated by municipalities in this state out of appropriations made by the legislature for that purpose.

(3) Municipalities may cooperate with the department in the development of aeronautics and aeronautic facilities in this state.

History: En. 1-204.3 by Sec. 7, Ch. 348, L. 1974; R.C.M. 1947, 1-204.3.

67-2-403. Federal aid. (1) The department may cooperate with the government of the United States and any agency or department thereof in the acquisition, construction, improvement, maintenance, and operation of airports and other air navigation facilities in this state and may comply with the laws of the United States and any regulations made under those laws for the expenditure of federal moneys upon airports and other navigation facilities.

(2) The department may accept, receive, and receipt for federal moneys and other moneys, either public or private, for and in behalf of this state or a municipality of this state, for the acquisition, construction, improvement, maintenance, and operation of airports and other air navigation facilities, whether the work is to be done by the state or by the municipalities or jointly, aided by grants of aid from the United States upon terms and conditions prescribed by the laws of the United States and any rules made under them. The department may act as agent of a municipality of this state upon the request of the municipality in accepting, receiving, and receipting for moneys in its behalf for airports or other air navigation facility purposes and in contracting for the acquisition, construction, improvement, maintenance, or operation of airports or other air navigation facilities financed either in whole or in part by federal moneys. The governing body of a municipality may designate the department as its agent for those purposes and enter into an agreement with it prescribing the terms and conditions of the agency in accordance with federal laws and rules. Moneys paid by the United States government shall be retained by the state or paid to the municipalities under terms and conditions imposed by the United States government in making the grants.

(3) All contracts for the acquisition, construction, improvement, maintenance, and operation of airports or other air navigation facilities made by the department, either as the agent of this state or as the agent of a municipality, shall be made under the laws of this state governing the making of like

contracts by the state or by municipalities. However, where the acquisition, construction, improvement, maintenance, and operation of an airport, landing strip, or other air navigation facility is financed wholly or partially with federal moneys, the department, as agent of the state or of a municipality of the state, may let contracts in the manner prescribed by the federal authorities, acting under the laws of the United States and any rules made under them.

(4) All moneys accepted for disbursement by the department under subsection (2) of this section shall be deposited in the state treasury and, unless otherwise prescribed by the authority from which the money is received, kept in separate funds, designated according to the purposes for which the moneys were made available, and held by the state in trust for those purposes. All those moneys are appropriated for the purposes for which they were made available, to be spent in accordance with federal laws and regulations and with this title. The department may, whether acting for this state or as the agent of any of its municipalities or when requested by the United States government or an agency or department of the United States, disburse the moneys for the designated purposes, but this does not preclude any other authorized method of disbursement.

History: En. Sec. 8, Ch. 152, L. 1945; amd. Sec. 9, Ch. 348, L. 1974; R.C.M. 1947, 1-205.

Part 5

Enforcement

67-2-501. Enforcement. The department and every state, county, and municipal officer charged with the enforcement of state or municipal laws shall enforce and assist in the enforcement of this title and of all rules adopted under it and of all other laws of this state relating to aeronautics. In the aid of that enforcement, the department possesses general police powers. The department may also, in the name of the state, enforce this title and the rules adopted under it by injunction in the courts of this state.

History: En. 1-204.4 by Sec. 8, Ch. 348, L. 1974; R.C.M. 1947, 1-204.4(1).

67-2-502. Investigations and hearings. The department may hold investigations, inquiries, and hearings concerning matters covered by this title, by its orders and rules, and concerning accidents in aeronautics within this state. An officer or employee of the department designated to hold an investigation or hearing may administer oaths and affirmations; certify official acts; issue subpoenas; and compel the attendance and testimony of witnesses and the production of papers, books, and documents. In case of failure to comply with a subpoena or order issued under this title, the department may invoke the aid of a state court of general jurisdiction. The court may then order the witness to comply with the requirements of the subpoena or order or to give evidence pertaining to the matter in question. A failure to obey the order of the court may be punished as a contempt.

History: En. 1-204.4 by Sec. 8, Ch. 348, L. 1974; R.C.M. 1947, 1-204.4(2).

67-2-503. Use of reports. The reports of investigations or hearings may not be admitted in evidence or used for any purpose in any suit, action, or proceedings growing out of a matter referred to in the investigation, hearing, or report, except in case of criminal or other proceedings instituted in behalf of the department or this state under this title and other laws of this state relating to aeronautics. An officer or employee of the department may not be required to testify to any facts ascertained in or information gained by reason of his official capacity or be required to testify as an expert witness in a suit, action, or proceeding involving an aircraft. The department may, in its discretion, make available to appropriate federal and state agencies information and material developed in the course of its hearings and investigations.

History: **En. 1-204.4 by Sec. 8, Ch. 348, L. 1974; R.C.M. 1947, 1-204.4(3).**

CHAPTER 3

REGULATION AND LICENSING

Part 1 — General Provisions

Section
67-3-101. Regulation and licensing — general provisions.
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Part 1

General Provisions

67-3-101. Regulation and licensing — general provisions. In order to promote the general public interest and safety and to carry out the purposes of this title, the department may:

(1) require the annual registration of federal licenses, permits, or certificates of civil aircraft engaged in air navigation within this state, of airmen engaged in aeronautics within this state, and of aeronautics instructors giving instruction in flying subjects and may issue certificates of registration. The certificates of registration constitute licenses of the aircraft, airmen, and instructors for operations within this state to the extent permitted by the federal licenses, certificates, or permits so registered. The department may charge a fee for the registration of each federal license, certificate, or permit not exceeding $1. It may accept as evidence of the holding of a federal license, certificate, or permit the verified application of the owner of the aircraft, the airman, or the instructor. The application shall contain information which the department may by rule or order prescribe.

(2) register aircraft repair shops, aircraft, aircraft parts and sales dealers, and other persons operating in aviation and license aircraft repair shops, aircraft, aircraft parts and dealers, and other persons operating in aviation, air schools, and aeronautics instructors giving instruction in ground subjects, in accordance with rules to be adopted by the department, and may annually renew these licenses. It may charge for the original licensing of aircraft repair shops, aircraft, aircraft parts and sales dealers, and other persons operating in aviation, air schools, and aeronautics instructors not more than $1 and for the renewal of a license not more than $1.

(3) approve airport and restricted landing area sites and license airports, restricted landing areas, or other air navigation facilities, in accordance with rules adopted by the department, and may annually renew these licenses. Licenses granted under this section or under any prior law shall be annually renewed upon payment of the fee. The department may not charge for approving certificates of proposed property acquisition for airport or restricted landing area purposes. It may charge for the issuance and annual renewal of each license for an airport or restricted landing area not to exceed $1.

(4) upon notification by the civil aeronautics authority that it has revoked the license or certificate of an aircraft, airman, air school, or aeronautics instructor, temporarily or permanently revoke the license or certificate of registration issued for that aircraft, airman, air school, or aeronautics instructor, giving reasons for the action.

History: En. Sec. 9, Ch. 152, L. 1945; amd. Sec. 10, Ch. 348, L. 1974; R.C.M. 1947, 1-301(1).

67-3-102. Exceptions. The provisions of subsections (2) and (4) of 67-3-101 do not apply to:

(1) an aircraft which has been licensed by a foreign country with which the United States has a reciprocal agreement covering the operations of that licensed aircraft;

(2) an aircraft which is owned by a nonresident of this state who is lawfully entitled to operate the aircraft in the state of his residence;

(3) an aircraft engaged principally in commercial flying constituting an act of interstate or foreign commerce;

(4) an airman operating military or public aircraft or an aircraft licensed by a foreign country with which the United States has a reciprocal agreement covering the operation of that licensed aircraft;

(5) a person operating model aircraft or a person piloting an aircraft which is equipped with fully functioning dual controls when a licensed instructor is in full charge of one set of the controls and the flight is solely for instruction or for the demonstration of the aircraft to a prospective purchaser;

(6) a nonresident operating aircraft in this state who is lawfully entitled to operate aircraft in the state of residence;

(7) an airman while operating or taking part in the operation of an aircraft engaged principally in commercial flying constituting an act of interstate or foreign commerce.

History: En. Sec. 9, Ch. 152, L. 1945; amd. Sec. 10, Ch. 348, L. 1974; R.C.M. 1947, 1-301(3).

67-3-103. Licenses and certificates — exhibition. (1) The federal license, certificate, or permit and the evidence of registration in this or another state, if any, required for an airman shall be kept in the personal possession of the airman when he is operating within this state and must be presented for inspection upon the demand of a passenger, a peace officer of this state, an authorized official or employee of the department, or an official, manager, or person in charge of an airport in this state upon which he lands or upon the reasonable request of any other person.

(2) The federal aircraft license, certificate, or permit and the evidence of registration in this or another state, if any, required for aircraft must be carried in every aircraft operating in this state at all times and must be conspicuously posted in the aircraft where they may readily be seen by passengers or inspectors and must be presented for inspection upon demand of a passenger, a peace officer of this state, an authorized official or employee of the department, or an official, manager, or person in charge of an airport in this state upon which it lands or upon the reasonable request of any person.

History: En. Sec. 10, Ch. 152, L. 1945; amd. Sec. 11, Ch. 348, L. 1974; R.C.M. 1947, 1-302.

67-3-104. Department orders. (1) The department shall set forth its reasons for its action and shall state the requirements to be met before approval will be given, registration permitted, license granted, or order modified or changed before it:

(a) refuses to issue a certificate of approval, issue a license, or renew a license for an airport, restricted landing area, or other air navigation facility;

(b) refuses to permit the registration of a license, certificate, or permit;

(c) refuses to grant a license to an air school or to an aeronautics instructor in ground subjects; or

(d) issues an order requiring certain things to be done or revoking a license or certificate.

(2) An order made by the department under this title shall be served upon the interested persons by registered or certified mail or in person.

(3) (a) A person aggrieved by an order of the department or by the granting or denial of a license, certificate, or registration may, within 10 days

after receiving notice of the department's order or action, appeal from the order or action to the district court of the county in which the person resides or the county in which any property affected by the order or action is located.

(b) The appellant shall file with the clerk of the district court to which the appeal is taken a notice of appeal which shall state the substance of the order or action appealed from, the date of the order or action, and that the person appeals to the court from it.

(c) The appellant shall serve a copy of the notice of appeal upon the department. The order of filing and service is immaterial.

(d) The appeal shall be heard not less than 10 days or more than 30 days after the filing of the notice of appeal unless the judge, for sufficient cause resulting from press of business or other reason, is unable to hear the appeal within that time. In that event, the hearing may be deferred until it can be heard by the court. The appeal may be heard without formal pleadings.

History: **En. Sec. 18, Ch. 152, L. 1945; amd. Sec. 17, Ch. 348, L. 1974; R.C.M. 1947, 1-310(part).**

67-3-105. Inspection powers. A person charged with the duty of enforcing this title may inspect and examine at reasonable hours any premises, buildings, or other structures where airports, restricted landing areas, air schools, flying clubs, or other air navigation facilities or aeronautical activities are operated or carried on.

History: **En. Sec. 18, Ch. 152, L. 1945; amd. Sec. 17, Ch. 348, L. 1974; R.C.M. 1947, 1-310(part).**

Part 2

Aircraft, Airman, and Instructor Licensing

67-3-201. Aircraft registration and licensing. (1) Except as provided in 67-3-102, a person may not operate or cause or authorize to be operated a civil aircraft within this state unless the aircraft has an appropriate effective license, certificate, or permit issued by the United States government which has been registered with the department and the registration with the department is in force.

(2) Aircraft customarily kept in this state shall be registered with the department, which may charge a fee therefor of not more than $10. The registration shall be renewed annually on or before June 1 each year.

(3) Section 67-3-202 and subsections (2) through (6) of this section shall not apply to:

(a) aircraft owned and operated by the federal government, the state, or any political subdivision thereof;

(b) aircraft owned and held by an aircraft dealer solely for the purpose of resale;

(c) aircraft operated by an airline company and regularly scheduled for the primary purpose of carrying persons or property for hire in interstate or international transportation; or

(d) dismantled or otherwise nonflyable aircraft.

(4) An aircraft shall be registered as property within a particular county of the state. This county shall be the county of the owner's principal residence, if the owner is a natural person, or the owner's principal place of

doing business in the state, if the owner is not a natural person. However, if the owner declares by affidavit that the aircraft is customarily kept at a landing facility in another county within the state, he may register the aircraft as property within such other county.

(5) Except as provided in 15-6-210, all aircraft shall be subject to all state, county, and school district tax levies and all other levies designated for aircraft- or airport-related uses. Such aircraft shall not be liable for other city tax levies.

(6) Aircraft not registered in the state but entering the state to engage in commercial operations shall be registered prior to commencing operation.

History: (1)En. Sec. 9, Ch. 152, L. 1945; amd. Sec. 10, Ch. 348, L. 1974; Sec. 1-301, R.C.M. 1947; (2) thru (6)En. 1-325 by Sec. 1, Ch. 542, L. 1975; amd. Sec. 1, Ch. 213, L. 1975; amd. Sec. 1, Ch. 210, L. 1977; Sec. 1-325, R.C.M. 1947; R.C.M. 1947, 1-301(part), 1-325; amd. Sec. 3, Ch. 229, L. 1979; amd. Sec. 2, Ch. 220, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "June 1" for "March 1" in (2).

67-3-202. Penalty for registration violations. (1) When an aircraft required to be registered under the provisions of subsections (2) through (6) of 67-3-201 is not registered on or before June 1 of the current calendar year, a penalty fee of $100 shall be added to the registration fee and collected. Registration of an aircraft in the name of the applicant for the year immediately preceding the year for which application for registration is made shall be prima facie evidence that the aircraft has been based in this state during the year for which application for registration is made.

(2) Except for aircraft exempt from property taxation as provided in 15-6-210, an application for registration shall be accompanied by a copy of the receipt for or statement of personal property tax paid, signed by the treasurer of the county where the aircraft is registered or a statement of lien assignment against real property signed by the county assessor where the aircraft is registered. A person who pays personal property tax on his aircraft to any jurisdiction other than the county where the aircraft is required to be registered is liable for the tax in that county without credit for such other taxes paid. In addition to this civil liability, a person who attempts to establish the situs of his aircraft in any jurisdiction other than the county where the aircraft is required to be registered with intent to avoid payment of taxes to that county commits the offense of false swearing as defined in 45-7-202.

(3) A person who operates an aircraft required to be registered in the state without having displayed upon such aircraft a certificate of registration issued by the department for that aircraft commits a misdemeanor.

History: En. 1-326 by Sec. 2, Ch. 542, L. 1975; amd. Sec. 1, Ch. 213, L. 1975; amd. Sec. 2, Ch. 210, L. 1977; R.C.M. 1947, 1-326; amd. Sec. 4, Ch. 229, L. 1979; amd. Sec. 3, Ch. 220, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "June 1" for "March 1" in (1).

67-3-203 through 67-3-210 reserved.

67-3-211. Airman licensing. Except as provided in 67-3-102, a person may not engage in aeronautics as an airman in this state unless he has from the department an effective certificate of registration of an appropriate effective airman's license, certificate, or permit issued by the United States government authorizing him to engage in the particular class of aeronautics in which he is engaged.

History: En. Sec. 9, Ch. 152, L. 1945; amd. Sec. 10, Ch. 348, L. 1974; R.C.M. 1947, 1-301(part).

67-3-212 through 67-3-220 reserved.

67-3-221. Air instructor license or certificate. It is unlawful for a person to operate an air school or to give instructions in flying or ground subjects in this state unless that person, if an air school or aeronautics instructor in ground subjects, is the holder of an annual license issued by the department or, if an aeronautics instructor in flying subjects, has an appropriate effective license, certificate, or permit issued by the United States government authorizing him to engage in the particular class of flight instruction in which he is engaged, which has been registered with the department, and the registration with the department is in full force.

History: En. Sec. 11, Ch. 152, L. 1945; amd. Sec. 12, Ch. 348, L. 1974; R.C.M. 1947, 1-303.

Part 3

Airport Licensing

67-3-301. Licensing — airports and other air navigation facilities. All proposed airports, restricted landing areas, and other air navigation facilities shall be first licensed by the department before they are used or operated. A municipality or person acquiring property for the purpose of constructing or establishing an airport or restricted landing area shall, prior to that acquisition, apply to the department for a certificate of approval of the site selected and the general purpose for which the property is to be acquired to ensure that the property and its use conform to minimum standards of safety and serve the public interest. It is unlawful for a municipality or an officer or employee of it or for any person to operate an airport, restricted landing area, or other air navigation facility for which an annual license has not been issued by the department.

History: En. Sec. 12, Ch. 152, L. 1945; amd. Sec. 13, Ch. 348, L. 1974; R.C.M. 1947, 1-304.

67-3-302. Applications for certificates and licenses — hearings. (1) When the department makes an order granting or denying a certificate of approval of an airport or a restricted landing area or an original license to use or operate an airport, restricted landing area, or other air navigation facility, and the applicant or any interested municipality, within 15 days after notice of the order has been sent to the applicant by registered or certified mail, demands a public hearing or when the department desires to hold a public hearing before making the order, a public hearing in relation to its action shall be held in the municipality applying for the certificate of approval or license or, in case the application was made by anyone other than a municipality, at the county seat of the county in which the proposed airport, restricted landing area, or other air navigation facility is proposed to be situated. At the hearing parties in interest and other persons shall have an opportunity to be heard.

(2) Notice of the hearing shall be published by the department at least twice in a newspaper of general circulation in the county in which the hearing is to be held, the first publication to be at least 15 days prior to the date of hearing.

(3) After a proper and timely demand has been made, the order shall be stayed until after the hearing, when the department may affirm, modify, or reverse it, or make a new order. If no hearing is demanded as provided in this section, the order becomes effective upon the expiration of the time permitted for making a demand.

(4) Where a certificate of approval of an airport or restricted landing area has been issued by the department, it may grant a license for operation and use and no hearing may be demanded.

History: **En. Sec. 13, Ch. 152, L. 1945; amd. Sec. 14, Ch. 348, L. 1974; R.C.M. 1947, 1-305.**

67-3-303. Standards — certificates and licenses. In determining whether to issue a certificate of approval or license for the use or operation of a proposed airport or restricted landing area, the department shall take into consideration its proposed location, size, and layout; the relationship of the proposed airport or restricted landing area to a comprehensive plan for statewide and nationwide development; whether there are safe areas available for expansion purposes; whether the adjoining area is free from obstructions based on a proper glide ratio; the nature of the terrain; the nature of the uses to which the proposed airport or restricted landing area will be put; and the possibilities for future development.

History: **En. Sec. 14, Ch. 152, L. 1945; amd. Sec. 15, Ch. 348, L. 1974; R.C.M. 1947, 1-306.**

67-3-304. Revocation of license or certificate. The department may temporarily or permanently revoke a certificate of approval or license issued by it when it determines that an airport, restricted landing area, or other navigation facilities are not being maintained or used in accordance with the provisions of this title and the rules adopted under it.

History: **En. Sec. 16, Ch. 152, L. 1945; amd. Sec. 16, Ch. 348, L. 1974; R.C.M. 1947, 1-308.**

67-3-305. Personal use exceptions. The provisions of 67-3-301, 67-3-302, and 67-3-303 shall not apply to restricted landing areas designed for personal use.

History: **En. Sec. 15, Ch. 152, L. 1945; R.C.M. 1947, 1-307.**

67-3-306. Federal government exceptions. The provisions of 67-3-301, 67-3-302, 67-3-303, and 67-3-305 shall not apply to any airport, restricted landing area, or other air navigation facility owned or operated by the federal government within this state.

History: **En. Sec. 17, Ch. 152, L. 1945; R.C.M. 1947, 1-309.**

Part 4

Air Operators and Air Carriers

67-3-401. Commercial air operators — insurance. The department shall require every commercial air operator to procure and continue in effect, as long as the commercial air operator continues to offer its services for compensation, adequate protection against liability imposed by law upon a commercial air operator for the payment of damages for personal bodily injuries, including death resulting from those injuries, and property damage as a result of an accident.

History: **En. Sec. 4, Ch. 122, L. 1967; amd. Sec. 19, Ch. 348, L. 1974; R.C.M. 1947, 1-314.**

67-3-402. Amount of insurance. The department, after a public hearing, shall set the amount of liability insurance, required by 67-3-401, which is reasonably necessary to provide adequate compensation for damage incurred through an accident involving a commercial air operator.

History: **En. Sec. 5, Ch. 122, L. 1967; amd. Sec. 20, Ch. 348, L. 1974; R.C.M. 1947, 1-315.**

67-3-403. Evidence of insurance. (1) The protection required under 67-3-401, covering each aircraft used or to be used in commercial operations for compensation, shall be evidenced by providing one of the following to the department:

(a) a copy of the policy of insurance issued by a company authorized to write the insurance in the state;

(b) a bond of a surety company authorized to write surety bonds in the state; or

(c) evidence of the qualification of the commercial air operator as a self-insurer as may be authorized by the department.

(2) With the consent of the department, a copy of an insurance policy, certified by the company issuing it to be a true copy of the original policy, a photostatic copy of the original policy, an abstract of the provisions of the policy, or a certificate of insurance issued by the company issuing the policy may be filed with the department instead of the original or a duplicate or counterpart of the policy.

(3) The department may accept policies of insurance written by unauthorized insurers if the policies of insurance meet the rules adopted by the department.

History: **En. Sec. 6, Ch. 122, L. 1967; amd. Sec. 21, Ch. 348, L. 1974; R.C.M. 1947, 1-316.**

67-3-404. Continuation of insurance — notice upon cancellation. The protection against liability shall be continued in effect as long as the commercial air operator continues to offer his services for compensation. The policy of insurance or surety bond shall not be cancelable on less than 30 days' written notice to the department, except in the event of cessation of operations as a commercial air operator.

History: **En. Sec. 8, Ch. 122, L. 1967; amd. Sec. 22, Ch. 348, L. 1974; R.C.M. 1947, 1-318.**

67-3-405. Violations. A commercial air operator who knowingly refuses or fails to procure protection against liability as required by 67-3-401 is guilty of a misdemeanor, and each day during which that commercial air operator continues in default constitutes a separate offense.

History: **En. Sec. 10, Ch. 122, L. 1967; amd. Sec. 24, Ch. 348, L. 1974; R.C.M. 1947, 1-320.**

67-3-406 through 67-3-420 reserved.

67-3-421. Regulatory powers of board of aeronautics. The board may:

(1) supervise and regulate every air carrier in those matters affecting ticketing, flight reservations, passenger baggage, advertising, passenger convenience and comfort, and transportation of freight;

(2) after notice to all interested parties and the public and after hearing, fix the rates, fares, charges, classifications, and rules of each carrier;

(3) regulate the accounts of each carrier and require the filing of annual and other reports and of other data by the carriers;

(4) by general order or otherwise, adopt rules applicable to all air carriers. The board, in the exercise of the jurisdiction conferred upon it, may make orders and adopt rules affecting air carriers, notwithstanding the provisions of any ordinance or permit of a town, city, city and county, or county, and in case of conflict the order or rule of the board prevails.

History: En. Sec. 2, Ch. 171, L. 1967; amd. Sec. 27, Ch. 348, L. 1974; R.C.M. 1947, 1-323(1).

67-3-422. Issuance of certificates of public convenience and necessity. (1) No air carrier may engage in an operation in this state without first obtaining from the board a certificate of public convenience and necessity authorizing the operation.

(2) An applicant shall submit his written verified application to the board. The application shall be in a form, contain the information, and be accompanied by proof of service upon all air carriers with which the proposed service is likely to compete and upon other interested parties, as the board requires. Each application shall be accompanied by a fee of $150.

(3) In awarding certificates of public convenience and necessity, the board shall consider the business experience of the particular air carrier in the field of air operations, the financial stability of the carrier, the insurance coverage of the carrier, the type of aircraft which the carrier would employ, proposed routes and minimum schedules to be established, whether the carrier could economically give adequate service to the communities involved, the need for the service, and any other factors which may affect the public interest.

(4) After notice to the interested parties and the public and after hearing, the board may:

(a) issue the certificate requested;

(b) refuse to issue the certificate;

(c) issue the certificate for the partial exercise only of the privilege sought.

(5) The board may attach terms and conditions to the exercise of the rights granted by the certificate as, in its judgment, the public convenience and necessity require.

History: En. 1-323.1 by Sec. 28, Ch. 348, L. 1974; R.C.M. 1947, 1-323.1.

67-3-423. Transfer and combination of certificates of public convenience and necessity. (1) The holder of a certificate of public convenience and necessity must apply to the board for permission to sell, mortgage, lease, assign, transfer, or otherwise encumber a certificate. A fee of $150 shall be paid to the department for filing each application to sell, mortgage, lease, assign, transfer, or otherwise encumber a certificate.

(2) The board may, after notice and hearing, approve the application or refuse to approve it and may approve it under those terms and conditions which, in its judgment, the public convenience and necessity require.

(3) Without the express approval of the board, no certificate of public convenience and necessity issued to one air carrier may be combined, united, or consolidated with a certificate issued to or possessed by another carrier so as to permit through service between any point served by one carrier and any point served by the other carrier.

History: En. 1-323.2 by Sec. 29, Ch. 348, L. 1974; R.C.M. 1947, 1-323.2.

67-3-424. Suspension — amendment — revocation. (1) Upon a finding of an agency of the federal government that an air carrier is operating in violation of a federal safety law or regulation, the board may suspend and the department shall enforce the suspension of certificates of public convenience and necessity issued by the board.

(2) For any other good cause, the board may, upon notice to the holder of a certificate and opportunity to be heard, suspend, revoke, alter, or amend a certificate.

History: En. 1-323.3 by Sec. 30, Ch. 348, L. 1974; R.C.M. 1947, 1-323.3.

67-3-425. Establishment of rates — discontinuance of service. (1) An air carrier may, upon prior written approval from the board, after notice to all interested parties and the public and after hearing, establish through rates and joint rates, charges, and classifications between all points served by it under certificates or operative rights issued to or possessed by it.

(2) No air carrier may discontinue operations to a point without authority of the board, unless the operations are unprofitable. Unprofitable operations may be discontinued upon 30 days' notice to the board and to other persons the board may require, unless within the 30-day period the board, after hearing, finds that the operation is not unprofitable and orders its continuance.

History: En. 1-323.4 by Sec. 31, Ch. 348, L. 1974; R.C.M. 1947, 1-323.4.

67-3-426. Board may require insurance. The board may, upon its motion or upon application of an interested party and after hearing, require an air carrier to procure and maintain insurance in amounts and upon terms as the board may determine. The board may suspend the certificate of an air carrier for failure to comply with the insurance regulations established under this section.

History: En. 1-323.5 by Sec. 32, Ch. 348, L. 1974; R.C.M. 1947, 1-323.5.

67-3-427. Enforcement, appeals, and judicial determinations. (1) When a complaint has been filed with the board alleging that an aircraft is being operated without a certificate of public convenience and necessity or when the board believes that 67-3-421 through 67-3-429 are being violated, the board shall investigate the operations and may, after a hearing, make its order requiring the operator of the aircraft to stop an operation in violation of this section. The department shall enforce compliance with the order by means of powers vested in it by law.

(2) The district court has jurisdiction to enforce, by proper decree, injunction, or order, the rates, classifications, rules, and orders made by the board. The proceeding shall be by equitable action in the name of the state and shall be instituted by the attorney general or county attorney when

advised by the department that an air carrier is violating or refusing to comply with a rule, order, rate, or classification made by the board and applicable to that air carrier. The proceedings shall have precedence over all other business in the district courts except criminal business.

(3) In an action the burden of proof rests upon the defendant, who must show by clear and satisfactory evidence that the rule, order, rate, or classification involved is unreasonable and unjust. If the court decides that the rule, order, rate, or classification is not unreasonable or unjust and that in refusing compliance the air carrier is failing to fulfill a duty, debt, or obligation, the court shall decree a mandatory and permanent injunction compelling compliance with the rule, order, rate, or classification by the defendant and its officers, agents, servants, and employees and may grant other relief which may be considered just and proper. A violation of the decree makes the defendant and officer, agent, servant, or employee of the defendant who is in any manner instrumental in the violation guilty of contempt, punishable by a fine not exceeding $1,000 for each offense or by imprisonment of that person until he sufficiently purges himself. The decree remains in effect until the rule, order, rate, or classification is modified or vacated by the board.

(4) An air carrier may bring an action in the district court of the county where the principal office or place of business is situated or in a county where a classification, rate, toll, charge, rule, or order of the board applies, against the board as defendant to determine whether the classification, rate, toll, charge, rule, or order made or established by the board is just and reasonable. In an action, hearing, or proceeding in any court, the classification, rate, toll, charge, rule, and order made and established by the board shall prima facie be considered just, reasonable, and proper.

(5) Appeals taken to the supreme court from the judgment of a district court under this section have precedence over all other business, except criminal business and original proceedings in that court, and shall be heard and determined as are appeals in civil actions.

(6) All costs and expenses incurred in the hearing, trial, or appeal of an action brought under this section shall be determined and assessed in a manner the court considers just and equitable.

History: En. 1-323.6 by Sec. 33, Ch. 348, L. 1974; R.C.M. 1947, 1-323.6.

67-3-428. Notice of regulation hearings. Notice as required by 67-3-421 through 67-3-427 shall be given by publication once a week for 3 successive weeks in a newspaper of general circulation in the county in which the hearing is to be held and by personal service by mailing to all interested parties. However, in the case of the hearings required by 67-3-421 and 67-3-425(1), if no written protest or written request that the hearing be held is received by the board within 5 days after the date of the last publication of the notice, the board may, in its discretion, vacate the hearing and establish the rates, fares, charges, classifications, and rules of the air carrier without hearing. The notice required by this section shall state that the board may vacate the hearing unless a written protest or request that the hearing be held is received by the board as required by this section.

History: En. Sec. 3, Ch. 171, L. 1967; amd. Sec. 1, Ch. 208, L. 1969; amd. Sec. 34, Ch. 348, L. 1974; R.C.M. 1947, 1-324.

67-3-429. Exceptions. (1) No air carrier may operate aircraft except in accordance with 67-3-421 through 67-3-429.

(2) Sections 67-3-421 through 67-3-429 do not apply to:

(a) common carriers of passengers or freight by aircraft which operate within this state under a certificate of public convenience and necessity issued by the federal government; or

(b) aircraft operators who carry passengers for hire, are commonly known as "taxi operators" or "charter operators", operate on an occasional or contract basis, and do not operate as common carriers between terminal points, including intermediate points, if any.

History: **En. Sec. 1, Ch. 171, L. 1967; amd. Sec. 25, Ch. 348, L. 1974; R.C.M. 1947, 1-322.**

CHAPTER 4

NOISE, HEIGHT, AND LAND USE REGULATION

Part 1 — General Provisions

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67-4-202. Temporary effect of designation.
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67-4-211. State lands.

Part 3 — Rules, Permits, and Variances

67-4-301. Local government to adopt rules.
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67-4-401. Penalty.
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Part 1

General Provisions

67-4-101. Legislative finding and purpose. It is hereby found that tall trees and structures and certain types of development located in the vicinity of airports endanger the lives and property of users of the airport and of occupants of land in its vicinity. It is also found that the location of tall trees and structures and certain types of development near airports reduce the area available for landing, taking off, and maneuvering aircraft and increase the likelihood of legal action against a local government for noise nuisance, thus destroying the utility of the airports and the public investment in them. It is therefore the purpose of this chapter to promote the public health, safety, and general welfare by the development of compatible noise, height, and land use regulations.

History: **En. 1-724 by Sec. 1, Ch. 551, L. 1977; R.C.M. 1947, 1-724.**

67-4-102. Definitions. (1) The definitions in 67-1-101 apply to this chapter.

(2) In this chapter the following definitions also apply:

(a) "Airport" means, for the purpose of this chapter, only those airports included on the national airport system plan.

(b) "Airport influence area" means all land in the proximity of an airport, the use of which may be affected by the airport's existence.

(c) "Local government" means any county or incorporated city or town having an airport influence area partially or entirely within its jurisdictional limits.

History: **En. 1-725 by Sec. 2, Ch. 551, L. 1977; R.C.M. 1947, 1-725.**

Part 2

Airport Influence Areas

67-4-201. Designation of airport influence areas. (1) A local government with an airport shall designate an airport influence area around the airport within 3 years from July 1, 1977. The designation shall be based on federal aviation administration rules and guidelines. However, no airport influence area may extend more than 10,000 feet out from the thresholds of the primary instrument approach runway or exceed 1 mile in width on each side of the primary instrument approach runway and its extended centerline. A public hearing shall be held by the local government following the procedure prescribed in 67-4-302.

(2) A map of the designation shall be filed with the county clerk and recorders of the affected counties and the city clerks of the affected cities and towns.

History: **En. 1-726 by Sec. 3, Ch. 551, L. 1977; R.C.M. 1947, 1-726.**

67-4-202. Temporary effect of designation. Upon the designation of an airport influence area, the use of land within the airport influence area shall be restricted as to height consistent with part 77, federal aeronautics regulations, until rules are adopted pursuant to this chapter. This restriction does not affect nonconforming uses and areas already zoned on July 1, 1977, and may not be imposed for a period of more than 1 year. After the designation of an airport influence area, no person may recover from a local government damages caused by noise and vibrations from normal and anticipated normal airport operations.

History: **En. 1-727 by Sec. 4, Ch. 551, L. 1977; R.C.M. 1947, 1-727.**

67-4-203. Development of criteria for regulation of influence area. (1) The local government shall devise criteria and guidelines for regulation of the airport influence area.

(2) The criteria and guidelines for noise regulations shall be designed to promote the public health, safety, and general welfare, and the criteria and guidelines for height and land use regulations shall be designed solely to promote the public safety. The criteria and guidelines shall, at the minimum, give reasonable consideration to, among other things:

(a) the safety of airport users and persons and property in the vicinity of the airport;

(b) the character of the flying operations conducted or expected to be conducted at the airport;

(c) the magnitude and duration of noise produced by aircraft and the number of aircraft flybys;

(d) the nature of the terrain;

(e) the future development of the airport;

(f) the views and mandates of the federal agency charged with the fostering of civil aeronautics as to the aerial surfaces necessary for safe flying operations.

History: **En. 1-728 by Sec. 5, Ch. 551, L. 1977; R.C.M. 1947, 1-728.**

67-4-204. Amendment of criteria — redesignation of influence area. (1) When circumstance so requires, the local government may amend the criteria and guidelines.

(2) The local government may redefine the boundaries of the influence area of an airport whenever an amendment to the criteria and guidelines so requires or whenever the airport site boundaries are altered.

History: **En. 1-732 by Sec. 9, Ch. 551, L. 1977; R.C.M. 1947, 1-732.**

67-4-205 through 67-4-210 reserved.

67-4-211. State lands. When an airport influence area lies partially or entirely on state-owned lands, the department of state lands shall administer the affected lands in conformance with the criteria and guidelines prescribed by the local governing body.

History: **En. 1-731 by Sec. 8, Ch. 551, L. 1977; R.C.M. 1947, 1-731.**

Part 3

Rules, Permits, and Variances

67-4-301. Local government to adopt rules. Within 1 year of the designation of an airport influence area, each local government affected shall adopt and provide for the administration of rules restricting the height to which structures may be erected and trees allowed to grow within the airport influence area.

History: **En. 1-729 by Sec. 6, Ch. 551, L. 1977; R.C.M. 1947, 1-729.**

67-4-302. Rulemaking — notice and hearing. Before a local government adopts or amends rules governing the airport influence area, it must hold a public hearing thereon. Unless otherwise specifically provided, when notice of a hearing or other official act is required by this title, the following shall apply:

(1) The notice shall be published two times with at least 7 days separating each publication. The first publication shall be no more than 21 days prior to the action and the last no less than 3 days prior to the action.

(2) The published notice shall contain:

(a) the date, time, and place at which the hearing or other action will occur;

(b) a brief statement of the action to be taken.

History: **En. 1-730 by Sec. 7, Ch. 551, L. 1977; R.C.M. 1947, 1-730.**

67-4-303. Rules to be reasonable — prior nonconforming uses. All rules adopted under this chapter shall be reasonable and may not require the removal or alteration of any structure or tree lawfully in existence when the rules become effective. Such uses are to be treated as prior nonconforming uses which may continue, but rules may prohibit their expansion or their reconstruction or replacement following destruction or substantial damage. Rules may further require that trees in place at the time the rules take effect be maintained by the local government, at its expense, at heights attained at that time. Land in existing residential subdivisions or platted for residential subdivision at the time rules are adopted may continue to be used for residential purposes.

History: **En. 1-738 by Sec. 15, Ch. 551, L. 1977; R.C.M. 1947, 1-738.**

67-4-304. Rules relative to zoning ordinances. (1) If a local government has adopted a zoning ordinance, any rules adopted under this chapter may be made a part of the zoning ordinance and may be administered and enforced in connection with it. However, the zoning ordinance may not limit the effectiveness or scope of the rules adopted pursuant to this chapter.

(2) Where a conflict exists between the rules adopted pursuant to this chapter and any zoning ordinances or resolutions applicable to the same area, the more stringent limitation or requirement shall prevail.

History: **En. 1-737 by Sec. 14, Ch. 551, L. 1977; R.C.M. 1947, 1-737.**

67-4-305 through 67-4-310 reserved.

67-4-311. Permit system. (1) The rules adopted pursuant to this chapter shall provide for a permit system for erecting new structures, changing uses of land or structures, and substantially altering, repairing, or replacing existing structures within the airport influence area.

(2) No material change may be made in the use of land and no structure or tree may be erected, altered, planted, or otherwise established in an airport influence area unless a permit for the use has been granted.

(3) No permit may be granted which would allow the establishment of an airport hazard or that would allow a nonconforming use, structure, or tree to become a greater hazard to air navigation than it was on the effective date of the designation of the airport influence area or any subsequent revisions to it or than it was prior to the application for a permit.

History: **En. 1-734 by Sec. 11, Ch. 551, L. 1977; R.C.M. 1947, 1-734.**

67-4-312. Board of adjustment. (1) All rules adopted pursuant to this chapter shall provide for a board of airport hazard adjustment consisting of five members to be appointed for terms and in the manner provided in 76-2-321 through 76-2-328.

(2) All of the provisions of 76-2-321 through 76-2-328 relating to appeals and judicial review are applicable to grievances relating to rules, variances, or permits.

(3) Where a local government has appointed a board of adjustment under the provisions of 76-2-221 through 76-2-228 or 76-2-321 through 76-2-328, the local government may designate the members of that board as the board of airport hazard adjustment required by this chapter, in which case the terms of such members for purposes of this chapter are concurrent with their terms as members of the board of adjustment.

History: En. 1-736 by Sec. 13, Ch. 551, L. 1977; R.C.M. 1947, 1-736.

67-4-313. Variance. (1) Any person desiring to erect or increase the height of a structure, permit the growth of a tree, or use his property in violation of the rules adopted pursuant to this chapter may apply to the board of airport hazard adjustment for a variance from the rules.

(2) A variance shall be granted where a literal application or enforcement of the rules would result in substantial practical difficulty or unnecessary hardship and where the variance would not be contrary to the public interest.

(3) A variance shall be granted for a nonconforming use where there is no immediate hazard to safe flying operations or persons and property in the vicinity of the airport and where the noise or vibrations from normal and anticipated normal operations of the airport would not be likely to cause structural damage.

(4) Within an airport influence area a person who obtains a variance for building a structure which is a nonconforming use under rules adopted pursuant to this chapter or a person who takes or buys property subject to such a variance is on notice that the airport existed before the variance was granted and that normal and anticipated normal operations of the airport will result in noise and vibrations being projected over the property. Furthermore, a person using a structure built under a variance may not collect damages from a local government for interference with the enjoyment of that structure caused by noise and vibrations from normal and anticipated normal airport operations.

History: En. 1-733 by Sec. 10, Ch. 551, L. 1977; R.C.M. 1947, 1-733.

67-4-314. Conditions on permit or variance. Any permit or variance granted pursuant to this chapter may require the owner of the structure or tree in question to permit the local government, at its expense, to install, operate, and maintain the lights and markers necessary to warn pilots of the presence of an airport hazard.

History: En. 1-735 by Sec. 12, Ch. 551, L. 1977; R.C.M. 1947, 1-735.

Part 4

Remedies

67-4-401. Penalty. Any person who violates any provision of this chapter or any rules adopted pursuant to it is guilty of a misdemeanor and punishable by a fine not to exceed $500, imprisonment in a county jail for a period not to exceed 6 months, or both. Each day a violation continues to exist constitutes a separate offense.

History: En. 1-739 by Sec. 16, Ch. 551, L. 1977; R.C.M. 1947, 1-739(1).

67-4-402. Injunction. A local governing body may institute in any court of competent jurisdiction an action to prevent, restrain, correct, or abate any violation of this chapter or the rules adopted under it.

History: En. 1-739 by Sec. 16, Ch. 551, L. 1977; R.C.M. 1947, 1-739(2).

CHAPTER 5

AIRPORT HAZARD REGULATION

Part 1 — General Provisions

Section

67-5-101. Purpose.
67-5-102. Exception — emergency landing strips.

Part 2 — Regulation and Restriction

67-5-201. Regulation of building heights.
67-5-202. Regulation of existing structures — power of acquisition.
67-5-203. Duty to acquire permit.
67-5-204. Restriction — lights.
Sections 67-5-205 through 67-5-210 reserved.
67-5-211. Enforcement.
67-5-212. Penalty.

Part 1

General Provisions

67-5-101. Purpose. For the purpose of ensuring safety from death or injury for aeronauts and passengers, to protect the property of those engaged in aeronautics, and to encourage and promote air travel and transportation of mail, passengers, express, and freight by air, it is considered necessary to eliminate dangerous obstructions of air space in the vicinity of airports or landing fields which may now be or which may hereafter be acquired, owned, operated, controlled, or maintained by the United States, the state of Montana or any county or municipality thereof. In order to promote the public order, health, and safety by providing unobstructed air space for the safe descent, landing, ascent, and operation of aircraft utilizing public airports in the state of Montana, the height of buildings and other structures in the vicinity of the airports and landing fields in the state of Montana owned, leased, operated, maintained, or controlled by any of those public authorities shall be regulated and restricted as hereafter provided.

History: En. Sec. 1, Ch. 12, L. 1939; amd. Sec. 3, Ch. 232, L. 1977; R.C.M. 1947, 1-701.

67-5-102. Exception — emergency landing strips. This chapter shall not apply to any landing fields or strips now established or hereafter established by the civil aeronautics authority of the United States government, known as "emergency landing strips", which do not provide at least 1,800 feet of landing area in all directions and which do not provide facilities for the housing, supply, and servicing of aircraft.

History: En. Sec. 7, Ch. 12, L. 1939; R.C.M. 1947, 1-707.

Part 2

Regulation and Restriction

67-5-201. Regulation of building heights. (1) The height of buildings and other structures shall be regulated for the purposes set forth in 67-5-101, considering among other things:

(a) requirements and facilities necessary to secure the safe descent, landing, ascent, and operation of aircraft utilizing the public airports and landing fields in the state of Montana;

(b) hazards from the obstruction of air space and the relation of the height of buildings and other structures in the vicinity of such airports and landing fields to such hazards;

(c) the area within which buildings and other structures may dangerously obstruct air space in the vicinity of public airports and landing fields and the height of buildings or other structures within such area which is consistent with the safe use of such airports and landing fields; and

(d) the maintenance and use of either obstruction markers or lights, or both, upon buildings and other structures within such area as safety devices.

(2) The height of buildings and other structures is regulated and restricted within a distance of 2 miles from any public airport or landing field, measured at a right angle from any side or in a radial line from any corner of the established boundary line thereof, in any and all directions, as follows:

(a) The trapezoidal portion of the total 2-mile zone area, 500 feet in width at the boundary of the field or airport and broadening to a width of 2,500 feet 2 miles distant, the centerline of which is a continuation of the centerline of each runway at and upon such public airports and landing fields, known as the approach zone, may have no building or other structure or natural feature or object of any kind therein, the height of which is more than one-twentieth its distance from the nearest boundary of the airport or landing field.

(b) The remaining portion of the 2-mile zone area surrounding such public airports and landing fields, lying between the approach zones and known as turning zones, may have no building or other structure or natural feature or object of any kind therein, the height of which is more than one-seventh its distance from the nearest boundary of the airport or landing field.

(3) In measuring distances and heights to determine the zone standard, measurements shall be taken from the nearest side of the building or structure or other object to the nearest side of the airport or landing field. In the event of airports having boundaries not regular, the nearest established perimeter of such port and field shall be used, as distinguished from the actual boundary.

History: En. Sec. 2, Ch. 12, L. 1939; amd. Sec. 4, Ch. 232, L. 1977; R.C.M. 1947, 1-702.

67-5-202. Regulation of existing structures — power of acquisition. With respect to any building or other structure existing on February 7, 1939, which does not conform to the regulations of this chapter in the manner of height, the governmental authority affected thereby (whether the United States, the state of Montana, the several counties, or the several municipalities) in its own right and name, to protect its own airports and landing fields and to carry out the purposes and provisions of this chapter, shall have and is hereby given the right and authority to acquire by purchase, grant, or condemnation, such estate or interest in any such building or structure or other object, whether natural object or not, and/or in the lands upon which situated as is necessary to vest full and absolute ownership and control in perpetuity of the space above such land to the extent necessary to correct or abate the height of any such nonconforming building or other structure or object to meet the requirements of this chapter as to height limitation within the zones designated.

History: En. Sec. 5, Ch. 12, L. 1939; R.C.M. 1947, 1-705.

67-5-203. Duty to acquire permit. (1) Each person, firm, or corporation in this state proposing to erect, establish, or maintain any building or other structure that would exceed the height limit established by law or to grow any natural object that would exceed such limit when grown, whenever the proposed erection or growth is within 2 miles of a public airport or landing field, shall apply to the proper officer of the United States or the state of Montana or any county or municipality thereof, whichever of those bodies has control of the airport or landing field affecting the area, for a permit to erect, establish, or maintain the structure, building, or object proposed.

(2) No permit may be granted unless the specifications of the building or other structure or object reveal that the total height does not or will not exceed the height limits fixed by law for the zone in which the same is to be established.

(3) No permit may be issued in violation of this section, and any permit which is issued in violation of this section is void.

History: En. Sec. 4, Ch. 12, L. 1939; amd. Sec. 5, Ch. 232, L. 1977; R.C.M. 1947, 1-704.

67-5-204. Restriction — lights. No searchlight, beacon light, or other glaring light shall be used, maintained, or operated within said Montana airport zoning areas so that the same shall reflect, glare, or shine upon or in the direction of the airports.

History: En. Sec. 8, Ch. 12, L. 1939; R.C.M. 1947, 1-708.

67-5-205 through 67-5-210 reserved.

67-5-211. Enforcement. It shall be the duty and authority of every public body or governmental authority owning, operating, or maintaining a public airport or landing field to enforce the provisions of this chapter as pertains to areas surrounding the particular airport under the control of such body, the same to be enforced in either the court of law or of equity in the state of Montana having jurisdiction of such action. Cases are to be instituted in the name of the governmental body charged hereunder with the enforcement hereof. Such action may be to prevent the erection, construction, or maintenance of such buildings or other structures or parts of buildings or structures as may exceed the height limits fixed by this law or to restrain, correct, or abate any such violation and to prevent the occupancy and use of any part of a building or structure erected in violation of this law.

History: **En. Sec. 3, Ch. 12, L. 1939; R.C.M. 1947, 1-703.**

67-5-212. Penalty. Any person or firm or corporation violating any of the provisions of this law shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not more than $500 or by imprisonment for a period of not more than 6 months or by both such fine and imprisonment. Each such person, firm, or corporation shall be deemed guilty of a separate offense for every day during any portion of which any violation of this law is committed, continued, or permitted by such person, firm, or corporation and shall be punishable as provided by such law.

History: **En. Sec. 12, Ch. 12, L. 1939; R.C.M. 1947, 1-709.**

CHAPTER 6

AIRPORT ZONING ACT

Part 1 — General Provisions

Section
67-6-101. Short title.
67-6-102. Legislative finding and purpose.
67-6-103. Constitutional restriction.

Part 2 — Zoning

67-6-201. Airport zoning power.
67-6-202. Airport zoning regulations — procedure — commission.
67-6-203. Airport zoning regulations — requirements.
67-6-204. Zoning regulations — merger or conflict.
67-6-205. Airport zoning regulations — administration.
67-6-206. Board of adjustment.
67-6-207. Permits — variances.
Sections 67-6-208 through 67-6-210 reserved.
67-6-211. Penalty — injunction.

Part 3 — Miscellaneous Provisions

67-6-301. Acquisition of property rights when zoning not sufficient.

Part 1

General Provisions

67-6-101. Short title. This chapter shall be known and may be cited as the "Airport Zoning Act".

History: **En. Sec. 14, Ch. 287, L. 1947; R.C.M. 1947, 1-723.**

67-6-102. Legislative finding and purpose. (1) It is hereby found that an airport hazard endangers the lives and property of users of the airport and of occupants of land in its vicinity and also, if of the obstruction type, in effect reduces the size of the area available for the landing, taking off, and maneuvering of aircraft, thus tending to destroy or impair the utility of the airport and the public investment therein.

(2) Accordingly, it is hereby declared:

(a) that the creation or establishment of an airport hazard is a public nuisance and an injury to the community served by the airport in question;

(b) that it is therefore necessary in the interest of the public health, public safety, and general welfare that the creation or establishment of airport hazards be prevented; and

(c) that this should be accomplished, to the extent legally possible, by exercise of the police power, without compensation.

(3) It is further declared that both the prevention of the creation or establishment of airport hazards and the elimination, removal, alteration, mitigation, or marking and lighting of existing airport hazards are public purposes for which political subdivisions may raise and expend public funds and acquire land or property interests therein.

History: En. Sec. 2, Ch. 287, L. 1947; R.C.M. 1947, 1-711.

67-6-103. Constitutional restriction. In any case in which airport zoning regulations adopted under this chapter, although generally reasonable, are held by a court to interfere with the use or enjoyment of a particular structure or parcel of land to such an extent or to be so onerous in their application to such a structure or parcel of land as to constitute a taking or deprivation of that property in violation of the constitution of this state or the constitution of the United States, such holding shall not affect the application of such regulations to other structures and parcels of land.

History: En. Sec. 10, Ch. 287, L. 1947; R.C.M. 1947, 1-719.

Part 2

Zoning

67-6-201. Airport zoning power. (1) In order to prevent the creation or establishment of airport hazards, every political subdivision having an airport hazard area within its territorial limits may adopt, administer, and enforce, under the police power and in the manner and upon the conditions prescribed, airport zoning regulations for such airport hazard area, which regulations may divide such area into zones and, within such zones, specify the land uses permitted and regulate and restrict the height to which structures and trees may be erected or allowed to grow.

(2) Where an airport is owned or controlled by a political subdivision and any airport hazard area appertaining to such airport is located outside the territorial limits of said political subdivision, within or without the state, the political subdivision owning or controlling the airport and the political subdivision within which the airport hazard area is located may, by ordinance or resolution duly adopted, create a joint airport zoning board, which board shall have the same power to adopt, administer, and enforce airport zoning

regulations applicable to the airport hazard area in question as that vested by subsection (1) in the political subdivision within which such area is located. Each such joint board shall have as members two representatives appointed by each political subdivision participating in its creation and in addition a chairman elected by a majority of the members so appointed.

(3) If in the judgment of a political subdivision owning or controlling an airport, the political subdivision within which is located an airport hazard area appertaining to that airport has failed to adopt or enforce reasonably adequate airport zoning regulations for such area under subsection (1) and if that political subdivision has refused to join in creating a joint airport zoning board as authorized in subsection (2), the political subdivision owning or controlling the airport may itself adopt, administer, and enforce airport zoning regulations for the airport hazard area in question. In the event of conflict between such regulations and any airport zoning regulations adopted by the political subdivision within which the airport hazard area is located, the regulations of the political subdivision owning or controlling the airport shall govern and prevail.

History: **En. Sec. 3, Ch. 287, L. 1947; R.C.M. 1947, 1-712.**

67-6-202. Airport zoning regulations — procedure — commission. (1) In adopting, amending, and repealing airport zoning regulations under this chapter, the political subdivision or joint airport zoning board shall follow the procedure prescribed by the laws of this state for the adoption, amendment, or repeal of comprehensive zoning regulations, as provided in Title 76, chapter 2, part 3.

(2) Prior to the initial zoning of any airport hazard area under this chapter, the political subdivision or joint airport zoning board which is to adopt the regulations shall appoint a commission, to be known as the airport zoning commission, to recommend the boundaries of the various zones to be established and the regulations to be adopted therefor. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and the legislative body of the political subdivision or the joint airport zoning board shall not hold its public hearings or take other action until it has received the final report of such commission. Where a city planning commission or comprehensive zoning commission already exists, it may be appointed as the airport zoning commission.

History: **En. Sec. 5, Ch. 287, L. 1947; R.C.M. 1947, 1-714.**

67-6-203. Airport zoning regulations — requirements. (1) All airport zoning regulations adopted under this chapter shall be reasonable, and none shall impose any requirement or restriction which is not reasonably necessary to effectuate the purposes of this chapter. In determining what regulations it may adopt, each political subdivision and joint airport zoning board shall consider, among other things, the character of the flying operations expected to be conducted at the airport, the nature of the terrain within the airport hazard area, the character of the neighborhood, and the uses to which the property to be zoned is put and adaptable.

(2) No airport zoning regulations adopted under this chapter shall require the removal, lowering, or other change or alteration of any structure or tree not conforming to the regulations when adopted or amended or otherwise

interfere with the continuance of any nonconforming use, except as provided in 67-6-207(3).

History: **En. Sec. 6, Ch. 287, L. 1947; R.C.M. 1947, 1-715.**

67-6-204. Zoning regulations — merger or conflict. (1) In the event that a political subdivision had adopted or hereafter adopts a comprehensive zoning ordinance regulating, among other things, the height of buildings, any airport zoning regulations applicable to the same area or portion thereof may be incorporated in and made a part of such comprehensive zoning regulations and be administered and enforced in connection therewith.

(2) In the event of conflict between any airport zoning regulations adopted under this chapter and any other regulations applicable to the same area, whether the conflict be with respect to the height of structures or trees, the use of land, or any other matter and whether such other regulations were adopted by the airport zoning regulations or by some other political subdivision, the more stringent limitation or requirement shall govern and prevail.

History: **En. Sec. 4, Ch. 287, L. 1947; R.C.M. 1947, 1-713.**

67-6-205. Airport zoning regulations — administration. All airport zoning regulations adopted under this chapter shall provide for the administration and enforcement of such regulations by an administrative agency which may be an agency created by such regulations or any official, board, or other existing agency of the political subdivision adopting the regulations or of one of the political subdivisions which participated in the creation of the joint airport zoning board adopting the regulations, if satisfactory to that political subdivision; but in no case shall such administrative agency be or include any member of the board of adjustment. The duties of any administrative agency designated pursuant to this chapter shall include that of hearing and deciding all permits under 67-6-207(1), but such agency shall not have or exercise any of the powers herein delegated to the board of adjustment.

History: **En. Sec. 8, Ch. 287, L. 1947; R.C.M. 1947, 1-717.**

67-6-206. Board of adjustment. All airport zoning regulations adopted under this chapter shall provide for a board of adjustment to be appointed in the manner and have and exercise all the powers provided in 76-2-321 through 76-2-328, and each and all of the provisions of said sections relating to appeals and judicial review shall be applicable to this chapter.

History: **En. Sec. 9, Ch. 287, L. 1947; R.C.M. 1947, 1-718.**

67-6-207. Permits — variances. (1) When advisable to facilitate the enforcement of this chapter, a system may be established for granting permits to establish or construct new structures and other uses. In any event, before any nonconforming structure may be replaced with a taller one or any nonconforming tree allowed to grow higher or be replanted, a permit must be secured from the administrative agency authorized to administer and enforce the regulations authorizing such replacement or change. No such permit shall be granted that would allow the structure to become a greater hazard to air navigation than it was when the applicable regulation was adopted. Whenever the administrative agency determines that a nonconforming structure or tree has been abandoned or more than 80% torn down, destroyed, deteriorated, or decayed, no permit shall be granted that would allow said structure or tree to exceed the applicable height limit or otherwise deviate from the zoning regulations. Except as indicated, all applications for permits for replacement, change, or repair of nonconforming uses shall be granted.

(2) Any person desiring to erect any structure, increase the height of any structure, permit the growth of any tree, or otherwise use his property in violation of airport zoning regulations adopted under this chapter may apply to the board of adjustment for a variance from the zoning regulations in question. Such variances shall be allowed where a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest but do substantial justice and be in accordance with the spirit of the regulations and this chapter. Any variance may be allowed subject to any reasonable conditions that the board of adjustment may deem necessary to effectuate the purposes of this chapter.

(3) In granting any permit or variance under this section, the administrative agency or board of adjustment may, if it deems such action advisable to effectuate the purposes of this chapter and reasonable in the circumstances, so condition such permit or variance as to require the owner of the structure or tree in question to permit the political subdivision, at its own expense, to install, operate, and maintain thereon such markers and lights as may be necessary to indicate to flyers the presence of an airport hazard.

History: En. Sec. 7, Ch. 287, L. 1947; R.C.M. 1947, 1-716.

67-6-208 through 67-6-210 reserved.

67-6-211. Penalty — injunction. Each violation of this chapter or of any regulations, orders, or rulings promulgated or made pursuant to this chapter shall constitute a misdemeanor and shall be punishable by a fine of not more than $500 or imprisonment for not more than 6 months or by both such fine and imprisonment, and each day a violation continues to exist shall constitute a separate offense. In addition the political subdivision or agency adopting zoning regulations under this chapter may institute in any court of competent jurisdiction an action to prevent, restrain, correct, or abate any violation of this chapter or of airport zoning regulations adopted under this chapter or of any order or ruling made in connection with their administration or enforcement; and the court shall adjudge to the plaintiff such relief, by way of injunction (which may be mandatory) or otherwise, as may be proper under all the facts and circumstances of the case, in order fully to effectuate the purposes of this chapter and of the regulations adopted and orders and rulings made pursuant thereto.

History: En. Sec. 11, Ch. 287, L. 1947; R.C.M. 1947, 1-720.

Part 3

Miscellaneous Provisions

67-6-301. Acquisition of property rights when zoning not sufficient. The political subdivision within which the property or nonconforming use is located or the political subdivision owning the airport or served by it may acquire, by purchase, grant, or condemnation in the manner provided by the law under which political subdivisions are authorized to acquire real property for public purposes, such air right, aviation easement, or other estate or interest in the property or nonconforming structure or use in question as may be necessary to effectuate the purposes of this chapter, in any case in which:

(1) it is desired to remove, lower, or otherwise terminate a nonconforming structure or use;

(2) the approach protection necessary cannot, because of constitutional limitations, be provided by airport zoning regulations under this chapter; or

(3) it appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations.

History: **En. Sec. 12, Ch. 287, L. 1947; R.C.M. 1947, 1-721.**

CHAPTERS 7 THROUGH 9

RESERVED

CHAPTER 10

MUNICIPAL AIRPORTS

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Part 1

General Provisions

67-10-101. Short title. This chapter may be cited as the "Municipal Airports Act".

History: En. Sec. 22, Ch. 288, L. 1947; R.C.M. 1947, 1-828; amd. Sec. 2, Ch. 140, L. 1979.

67-10-102. Acquisition and establishment of airports and landing fields. (1) Counties, cities, and towns in this state may, either individually or by the joint action of a county and one or more of the cities and towns within its border, acquire by gift, deed, purchase, or condemnation land for airport or landing field purposes and thereon establish, construct, own, control, lease, equip, improve, operate, and regulate airports or landing fields for the use of airplanes and other aircraft and may use for such purpose or purposes any property suitable therefor that now or may at any time hereafter be acquired, owned, or controlled by such county, city, or town.

(2) In addition a county, city, or town may do the acts authorized by this section by acting jointly with one or more counties, with one or more cities, with one or more towns, or any combination of such counties, cities, or towns. Such airport need not be located, in whole or in part, within the limits of each subdivision participating in the joint venture.

History: En. Sec. 1, Ch. 108, L. 1929; re-en. Sec. 5668.35, R.C.M. 1935; amd. Sec. 1, Ch. 54, L. 1941; amd. Sec. 1, Ch. 88, L. 1961; R.C.M. 1947, 1-801.

67-10-103. Public purpose. (1) Any lands acquired, owned, controlled, or occupied by any county, city, or town, individually or pursuant to joint action as herein provided for the purposes enumerated in 67-10-102, are acquired, owned, controlled, and occupied for a public use and as a matter of public necessity, and such counties, cities, and towns, whether acting individually or jointly, have the right to acquire property for such purposes under the power of eminent domain as and for a public use or necessity.

(2) The acquisition of any land or interest therein pursuant to this chapter; the planning, acquisition, establishment, development, construction, improvement, maintenance, equipment, operation, regulation, protection, and policing of airports and air navigation facilities, including the acquisition or elimination of airport hazards; and the exercise of any other powers herein granted to municipalities and other public agencies, to be severally or jointly exercised, are public and governmental functions, exercised for a public purpose and matters of public necessity and, in the case of any county, are county functions and purposes as well as public and governmental and, in the

case of any municipality other than a county, are municipal functions and purposes as well as public and governmental. All land and other property and privileges acquired and used by or on behalf of any municipality or other public agency in the manner and for the purposes enumerated in this chapter are acquired and used for public and governmental purposes and as a matter of public necessity and, in the case of a county or municipality, for county or municipal purposes, respectively.

History: (1)En. Sec. 2, Ch. 108, L. 1929; re-en. Sec. 5668.36, R.C.M. 1935; amd. Sec. 2, Ch. 54, L. 1941; amd. Sec. 2, Ch. 88, L. 1961; Sec. 1-802, R.C.M. 1947; (2)En. Sec. 15, Ch. 288, L. 1947; Sec. 1-822, R.C.M. 1947; R.C.M. 1947, 1-802, 1-822; amd. Sec. 3, Ch. 140, L. 1979.

67-10-104. Construction. This chapter shall be so interpreted and construed as to make uniform so far as possible the laws and regulations of this state and other states and of the government of the United States having to do with the subject of municipal airports.

History: En. Sec. 19, Ch. 288, L. 1947; R.C.M. 1947, 1-826; amd. Sec. 4, Ch. 140, L. 1979.

Part 2

General Powers of Municipality Relating to Airports

67-10-201. General municipal powers. (1) Every municipality may, out of any appropriations or other money made available for such purposes, plan, establish, develop, construct, enlarge, improve, maintain, equip, operate, regulate, protect, and police airports and air navigation facilities, either within or without the territorial limits of such municipality and within or without the territorial boundaries of this state, including the construction, installation, equipment, maintenance, and operation at such airports of buildings and other facilities for the servicing of aircraft or for the comfort and accommodation of air travelers and the purchase and sale of supplies, goods, and commodities as an incident to the operation of its airport properties. For such purposes the municipality may use any available property that it may now or hereafter own or control and may, by purchase, gift, devise, lease, eminent domain proceedings, or otherwise, acquire property, real or personal, or any interest therein, including easements, in airport hazards or land outside the boundaries of an airport or airport site, as is necessary to permit safe and efficient operation of the airport; to permit the removal, elimination, obstruction-marking, or obstruction-lighting of airport hazards; or to prevent the establishment of airport hazards.

(2) The municipality may, by purchase, gift, devise, lease, eminent domain proceedings, or otherwise, acquire existing airports and air navigation facilities, provided however it may not acquire or take over any airport or air navigation facility owned or controlled by another municipality or public agency of this or any other state without the consent of such municipality or public agency.

(3) For the purposes of this chapter, a municipality may establish or acquire and maintain, within or bordering upon the territorial limits of the municipality, airports in, over, and upon any public waters of this state, any submerged lands under such public waters and any artificial or reclaimed lands which before the artificial making or reclamation thereof constituted a

portion of the submerged lands under such public waters, and may construct and maintain terminal buildings, landing floats, causeways, roadways, and bridges for approaches to or connecting with any such airport, and landing floats and breakwaters for the protection thereof.

(4) All air navigation facilities established or operated by municipalities shall be supplementary to and coordinated in design and operation with those established and operated by the federal and state governments.

(5) A municipality may enter into any contracts necessary for the execution of the powers granted it and for the purposes provided by this chapter.

History: En. Secs. 2, 13, Ch. 288, L. 1947; R.C.M. 1947, 1-809, 1-820; amd. Sec. 5, Ch. 140, L. 1979.

67-10-202. Creation of board — funding — rules. (1) The county, city, or town, acting individually or acting jointly as authorized by 67-10-102, having established an airport or landing field and acquired property for such purpose, may construct, improve, equip, maintain, and operate the same and for that purpose may create a board or body from the inhabitants of such county, city, or town, or such joint subdivisions of the state for the purpose of conferring upon them, and may confer upon them, the jurisdiction for the improvement, equipment, maintenance, and operation of such airport or landing field. The board of county commissioners, the city or town council, as the case may be, or the board of county commissioners and the council or councils under a joint venture may adopt rules and establish fees or charges for the use of such airport or landing field or may authorize such board or body to do so, subject, however, to the approval of the appointing power before the same shall take effect. All expenses of such construction, improvement, equipment, maintenance, and operation shall be a charge against such county, city, or town; or when a county, city, or town acts jointly under the authority herein given, such charges shall be against the joint subdivisions of the state and shall be apportioned according to benefits to accrue, the proportion to be paid by each to be fixed in advance by joint resolution of the governing bodies.

(2) For the purpose of meeting the charges mentioned when the airport or landing field is such joint venture, a joint fund shall be created and maintained into which each of the political subdivisions interested shall deposit its proportionate share in accordance with the predetermination of the board of county commissioners and council or councils affected.

(3) All disbursements from such fund shall be made by order of such joint board or body, if one be created as authorized, otherwise under such rules as the joint control by the commissioners and council or councils may adopt.

History: En. Sec. 3, Ch. 108, L. 1929; re-en. Sec. 5668.37, R.C.M. 1935; amd. Sec. 3, Ch. 54, L. 1941; amd. Sec. 3, Ch. 88, L. 1961; R.C.M. 1947, 1-803.

67-10-203. Mutual assistance. If any municipality determines that the public interest and the interests of the municipality will be served by assisting any other municipality or municipalities in exercising the powers and authority granted by this chapter, such municipality may furnish assistance by gift of real or personal property or lease or loan thereof with or without charge or interest. In appropriating such property or money and providing for such assistance by taxation, the issuance of bonds, or other means, the municipality may exercise all of its powers as though used for its own direct purposes as provided in this chapter.

History: **En. Sec. 12, Ch. 288, L. 1947; R.C.M. 1947, 1-819; amd. Sec. 6, Ch. 140, L. 1979.**

67-10-204. Joint exercise of powers. (1) For the purposes of 67-10-204 through 67-10-206, unless otherwise qualified, the term "public agency" includes municipality, as defined in this title; any agency of the state government and of the United States; and any municipality, political subdivision, and agency of another state; and the term "governing body" means the governing body of a county or municipality and the head of the agency if the public agency is other than a county or municipality.

(2) All powers, privileges, and authority granted to any municipality by this chapter may be exercised and enjoyed jointly with any public agency of this state and jointly with any public agency of any other state or of the United States to the extent that the laws of such other state or of the United States permit such joint exercise or enjoyment. If not otherwise authorized by law, any agency of the state government when acting jointly with any municipality may exercise and enjoy all of the powers, privileges, and authority conferred by this chapter upon a municipality.

(3) Any two or more public agencies may enter into agreements with each other for joint action pursuant to the provisions of 67-10-204 through 67-10-206. Concurrent action by ordinance, resolution, or otherwise of the governing bodies of the participating public agencies constitutes joint action. Each such agreement shall specify its duration; the proportionate interest which each public agency has in the property, facilities, and privileges involved; the proportion to be borne by each public agency of preliminary costs and costs of acquisition, establishment, construction, enlargement, improvement, and equipment of the airport or air navigation facility; the proportion of the expenses of maintenance, operation, regulation, and protection thereof to be borne by each; and such other terms as are required by the provisions of 67-10-204 through 67-10-206. The agreement may also provide for amendments thereof and conditions and methods of termination of the agreement; the disposal of all or any of the property, facilities, and privileges jointly owned, prior to or upon said property, facilities, and privileges, or any part thereof, ceasing to be used for the purposes provided in this chapter or upon termination of the agreement; the distribution of the proceeds received upon any such disposal and of any funds or other property jointly owned and undisposed of; the assumption or payment of any indebtedness arising from the joint venture which remains unpaid upon the disposal of all assets or upon a termination of the agreement; and such other provisions as may be necessary or convenient.

History: **En. Sec. 14, Ch. 288, L. 1947; amd. Sec. 1, Ch. 10, L. 1975; R.C.M. 1947, 1-821(a), (b); amd. Sec. 7, Ch. 140, L. 1979.**

67-10-205. Joint airport board. (1) Public agencies acting jointly pursuant to 67-10-204 through 67-10-206 shall create a joint board which shall consist of members appointed by the governing body of each participating public agency. Per diem and mileage of such joint board may be set by resolution of the board of county commissioners. The number to be appointed and their term shall be provided for in the joint agreement. Each such joint board shall organize, select officers for terms to be fixed by the agreement, and from time to time adopt and amend rules for its own procedure. The joint board shall have power to plan, acquire, establish, develop, construct, enlarge, improve, maintain, equip, operate, regulate, protect, and police any airport or air navigation facility or airport hazard to be jointly acquired, controlled, and operated; and such board may exercise on behalf of its constituent public agencies all the powers of each with respect to such airport, air navigation facility, or airport hazard, subject to the limitations of subsection (2) of this section.

(2) (a) The total expenditures to be made by the joint board for any purpose in any calendar year shall be determined by a budget approved by the governing bodies of its constituent public agencies.

(b) No airport, air navigation facility, airport hazard, or real or personal property, the cost of which is in excess of sums therefor fixed by the joint agreement or allotted in the annual budget, may be acquired by the joint board without the approval of the governing bodies of its constituent public agencies.

(c) Eminent domain proceedings under 67-10-204 through 67-10-206 may be instituted only by authority of the governing bodies of the constituent public agencies of the joint board. If so authorized, such proceedings shall be instituted in the names of the constituent public agencies jointly, and the property so acquired shall be held by said public agencies as tenants in common until conveyed by them to the joint board.

(d) The joint board shall not dispose of any airport, air navigation facility, or real property under its jurisdiction except with the consent of the governing bodies of its constituent public agencies, provided that the joint board may, without such consent, enter into the contract, lease, or other arrangements contemplated by 67-10-302.

(e) Any resolutions, rules, or orders of the joint board dealing with subjects authorized by 67-10-301 shall become effective only upon approval of the governing bodies of the constituent public agencies, provided that upon such approval, the resolutions, rules, or orders of the joint board shall have the same force and effect in the territories or jurisdictions involved as the ordinance, resolutions, rules, or orders of each public agency would have in its own territory or jurisdiction.

History: En. Sec. 14, Ch. 288, L. 1947; amd. Sec. 1, Ch. 10, L. 1975; R.C.M. 1947, 1-821(c), (d).

67-10-206. Joint fund. For the purpose of providing a joint board with moneys for the necessary expenditures in carrying out the provisions of 67-10-204 and 67-10-205, a joint fund shall be created and maintained into which shall be deposited the share of each of the constituent public agencies as provided by the joint agreement. Each of the constituent public agencies shall provide its share of the fund from sources available to each. Any federal, state, or other contributions or loans and the revenues obtained from the joint ownership, control, and operation of any airport or air navigation facility under the jurisdiction of the joint board shall be paid into the joint fund. Disbursements from such fund shall be made by order of the board, subject to the limitations prescribed in 67-10-205(2).

History: En. Sec. 14, Ch. 288, L. 1947; amd. Sec. 1, Ch. 10, L. 1975; R.C.M. 1947, 1-821(e).

67-10-207. Supplementary powers. In addition to the general and special powers conferred by this chapter, every municipality is authorized to exercise powers necessarily incidental to the exercise of such general and special powers.

History: En. Sec. 17, Ch. 288, L. 1947; R.C.M. 1947, 1-824; amd. Sec. 8, Ch. 140, L. 1979.

67-10-208 through 67-10-210 reserved.

67-10-211. Assistance in airport road construction — department of highways. The department of highways may, upon written application of the governing body of a municipality, assist the municipality in the location, establishment, construction, reconstruction, maintenance, and improvement of highways and roads to and from municipal airports and field development of them. The department of highways shall lend its equipment, machinery, technical services, and supervision to the municipality, under agreements made with each municipality.

History: En. Sec. 1, Ch. 120, L. 1939; amd. Sec. 39, Ch. 348, L. 1974; R.C.M. 1947, 1-807.

67-10-212 through 67-10-220 reserved.

67-10-221. Airport property — acquisition by eminent domain. In the acquisition of property by eminent domain proceedings authorized by this chapter, the municipality shall proceed in the manner provided by the laws governing eminent domain of the state of Montana. The municipality is not precluded from abandoning such proceedings in any case where possession of the property has not been taken.

History: En. Sec. 3, Ch. 288, L. 1947; R.C.M. 1947, 1-810; amd. Sec. 9, Ch. 140, L. 1979.

67-10-222. Airport property — disposal. Except as may be limited by the terms and conditions of any grant, loan, or agreement pursuant to 67-10-405, every municipality may by sale, lease, or otherwise dispose of any airport, air navigation facility, or other property or portion thereof or interest therein acquired pursuant to this chapter. Such disposal by sale, lease, or otherwise shall be in accordance with the laws of this state or provisions of the charter of the municipality governing the disposition of other property of the municipality or agency of the state or federal government for aeronautical purposes incident thereto. The sale, lease, or other disposal may be effected in such manner and upon such terms as the governing body of the municipality may consider in the best interest of the municipality.

History: En. Sec. 4, Ch. 288, L. 1947; R.C.M. 1947, 1-811; amd. Sec. 10, Ch. 140, L. 1979.

67-10-223 through 67-10-230 reserved.

67-10-231. No limitation on airport hazard zoning. Nothing contained in this chapter shall be construed to limit any right, power, or authority of a municipality to regulate airport hazards by zoning.

History: En. Sec. 18, Ch. 288, L. 1947; R.C.M. 1947, 1-825; amd. Sec. 11, Ch. 140, L. 1979.

Part 3

Operation of Airports

67-10-301. Municipal regulation. (1) A municipality which has established or acquired or which may establish or acquire an airport or air navigation facility is authorized to adopt, amend, and repeal such reasonable ordinances, resolutions, rules, and orders as it shall deem necessary for the management, government, and use of such airport or air navigation facility under its control, whether situated within or without the territorial limits of the municipality. For the enforcement thereof, the municipality may, by ordinance or resolution, as may by law be appropriate, appoint airport guards or police with full police powers and fix penalties within the limits prescribed by law for the violation of the ordinances, resolutions, rules, and orders. Said penalties shall be enforced in the same manner in which penalties prescribed by other ordinances or resolutions of the municipality are enforced. To the extent that an airport or other air navigation facility controlled and operated by a municipality is located outside the territorial limits of the municipality, it shall, subject to federal and state laws and rules, be under the jurisdiction and control of the municipality controlling or operating it, and no other municipality shall have any authority to charge or exact a license fee or occupation tax for operations thereon.

(2) All ordinances, resolutions, rules, or orders which are issued by the municipality shall be kept in substantial conformity with the laws of this state or any regulations promulgated or standards established pursuant thereto and, as nearly as may be, with the federal laws governing aeronautics and the rules and standards duly issued thereunder.

History: **En. Sec. 8, Ch. 288, L. 1947; R.C.M. 1947, 1-815.**

67-10-302. Granting of operation and use privileges. (1) In operating an airport or air navigation facility owned, leased, or controlled by a municipality, such municipality may, except as may be limited by the terms and conditions of any grant, loan, or agreement pursuant to 67-10-405, enter into contracts, leases, and other arrangements for a term not exceeding 20 years with any persons:

(a) granting the privilege of using or improving such airport or air navigation facility or any portion or facility thereof or space therein for commercial purposes;

(b) conferring the privilege of supplying goods, commodities, things, services, or facilities at such airport or air navigation facility; or

(c) making available services to be furnished by the municipality or its agents at such airport or air navigation facility.

(2) In each case the municipality may establish the terms and conditions and fix the charges, rentals, or fees for the privileges or services, which shall be reasonable and uniform for the same class of privilege or service and shall be established with due regard to the property and improvements used and the expenses of operation to the municipality.

(3) Except as may be limited by the terms and conditions of any grant, loan, or agreement pursuant to 67-10-405, a municipality may by contract, lease, or other arrangement, upon a consideration fixed by it, grant to any qualified person for a term not to exceed 20 years the privilege of operating, as agent of the municipality or otherwise, any airport owned or controlled by the municipality; provided that no such person shall be granted any authority to operate such an airport other than as a public airport or to enter into any contracts, leases, or other arrangements in connection with the operation

of the airport which the municipality might not have undertaken under subsections (1) and (2) of this section.

History: En. Sec. 5, Ch. 288, L. 1947; R.C.M. 1947, 1-812.

67-10-303. Delegation of authority. Any authority vested by this chapter in a municipality or in the governing body thereof for the planning, establishment, development, construction, enlargement, improvement, maintenance, equipment, operation, regulation, protection, and policing of airports or other air navigation facilities established, owned, or controlled or to be established, owned, or controlled by the municipality may be vested by resolution of the governing body of the municipality in an officer or board or other municipal agency whose powers and duties must be prescribed in the resolution. However, the expense of such planning, establishment, development, construction, enlargement, improvement, maintenance, equipment, operation, regulation, protection, and policing is a responsibility of the municipality.

History: En. Sec. 7, Ch. 288, L. 1947; R.C.M. 1947, 1-814; amd. Sec. 12, Ch. 140, L. 1979.

Part 4

Finance

67-10-401. Appropriations — taxation. The governing body of any municipality having power to appropriate and raise money is authorized to appropriate, and to raise by taxation or otherwise, sufficient money to carry out the provisions and purposes of this chapter, within the limitations prescribed by law.

History: En. Sec. 9, Ch. 288, L. 1947; R.C.M. 1947, 1-816; amd. Sec. 13, Ch. 140, L. 1979.

67-10-402. Tax levy. (1) For the purpose of establishing, constructing, equipping, maintaining, and operating airports and landing fields under the provisions of this chapter, the county commissioners or the city or town council may each year assess and levy, in addition to the annual levy for general administrative purposes or the all-purpose levy authorized by 7-6-4451 and 7-6-4452, a tax of not to exceed 2 mills on the dollar of taxable value of the property of said county, city, or town.

(2) In the event of a jointly established airport or landing field, the county commissioners and the council or councils involved shall determine in advance the levy necessary for such purposes and the proportion each political subdivision joining in the venture must pay.

(3) No property within any political subdivision may be subject to a tax pursuant to this section at an annual rate in excess of 2 mills unless it is found that the levy is insufficient for the purposes enumerated. In such a case the commissioners and councils acting are authorized and empowered to contract an indebtedness on behalf of such county, city, or town, as the case may be, upon the credit thereof by borrowing money or issuing bonds for such purposes, provided that no bonds may be issued for such purpose until the proposition has been submitted to the qualified electors and a majority vote cast therefor, except as provided in subsection (4).

(4) For the purpose of establishing a reserve fund to resurface, overlay, or improve existing runways, taxiways, and ramps, the governing bodies may set up annual reserve funds in their annual budget if:

(a) the reserve is approved by the governing bodies during the normal budgeting procedure;

(b) the necessity to resurface or improve said runways by overlays or similar methods every so many years is based upon competent engineering estimates; and

(c) the funds are expended at least within each 10-year period.

(5) The reserve fund may not exceed at any time a competent engineering estimate of the cost of resurfacing or overlaying the existing runways, taxiways, and ramps of any one airport for each fund. The governing body of the airport, if in its judgment it considers it advantageous, may invest the fund in any interest-bearing deposits in a state or national bank insured by the FDIC or obligations of the United States of America, either short-term or long-term. Interest earned from such investments must be credited to the operations and maintenance budget of the airport governing body. The above provisions, notwithstanding other budget control measures and due to the uniqueness of the subject matter, are declared necessary in the interests of the public health and safety.

History: En. Sec. 4, Ch. 108, L. 1929; re-en. Sec. 5668.38, R.C.M. 1935; amd. Sec. 4, Ch. 54, L. 1941; amd. Sec. 1, Ch. 54, L. 1945; amd. Sec. 1, Ch. 122, L. 1969; amd. Sec. 16, Ch. 158, L. 1971; amd. Sec. 3, Ch. 501, L. 1973; R.C.M. 1947, 1-804; amd. Sec. 14, Ch. 140, L. 1979; amd. Sec. 1, Ch. 231, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "no money may be borrowed and" before "no bonds may be issued for such purpose" in (3).

67-10-403. Liens. To enforce the payment of any charges for repairs or improvements to or storage or care of any personal property made or furnished by the municipality or its agents in connection with the operation of an airport or air navigation facility owned or operated by the municipality, the municipality shall have liens on such property, which shall be enforceable by the municipality as provided by law.

History: En. Sec. 6, Ch. 288, L. 1947; R.C.M. 1947, 1-813.

67-10-404. Airport revenues and sale proceeds. The revenues obtained by a municipality from the ownership, control, or operation of any airport or air navigation facility, including proceeds from the sale of any airport or portion thereof or air navigation facility property, must be deposited in a special fund to be designated the ".... airport fund", which revenues must be appropriated solely to, and used by the municipality for the purposes authorized by this chapter.

History: En. Sec. 10, Ch. 288, L. 1947; R.C.M. 1947, 1-817; amd. Sec. 15, Ch. 140, L. 1979.

67-10-405. Federal and state money. (1) A municipality may accept, receive, receipt for, disburse, and spend federal and state money and other money, public or private, made available by grant or loan or both to accomplish any of the purposes of this chapter. All federal money accepted under this section must be accepted and spent by the municipality upon terms and conditions prescribed by the United States and consistent with state law. All state money accepted under this section must be accepted and spent by the municipality upon terms and conditions prescribed by the state. Unless otherwise prescribed by the agency from which the money is received, the chief financial officer of the municipality shall on its behalf deposit and keep all money received pursuant to this section in separate funds, designated according to the purposes for which the money is made available, in trust for those purposes.

(2) No application may be made by a municipality for federal aid, as provided in this section, unless the "project application", as defined in the Federal Airport Act of 1946 and regulations of the administrator of civil aeronautics, is first approved by the department.

(3) A municipality may, with the approval and consent of the department, designate the department as its agent to accept, receive, receipt for, and disburse federal and state money and other money, public or private, made available by grant or loan or both to accomplish any of the purposes of this chapter. A municipality may, with the consent of the department, designate the department as its agent in contracting for and supervising the planning, acquisition, development, construction, improvement, or equipment of an airport or other air navigation facility. All contracts made, let, or awarded by the department acting as agent of a municipality under this section must be made, let, or awarded pursuant to the laws governing the making of contracts by or on behalf of the state. The municipality may enter into an agreement with the department providing for payment to the department for services rendered as agent and prescribing the terms and conditions of the agency, in accordance with terms and conditions prescribed by the United States, if federal money is involved and in accordance with applicable state law. All federal money accepted under this section by the department must be accepted and transferred or spent by the department upon terms and conditions prescribed by the United States. All money received by the department under this subsection must be deposited in the state treasury and, unless otherwise prescribed by the agency from which the money is received, must be kept in separate funds designated according to the purposes for which the money is made available and held by the state in trust for those purposes.

History: En. Sec. 11, Ch. 288, L. 1947; amd. Sec. 41, Ch. 348, L. 1974; R.C.M. 1947, 1-818; amd. Sec. 16, Ch. 140, L. 1979.

67-10-406. Tax exemption. Any property in this state acquired by a municipality for airport purposes pursuant to the provisions of this chapter and any income derived by such municipality from the ownership, operation, or control thereof is exempt from taxation to the same extent as other property used for public purposes. Any municipality is authorized to exempt from municipal taxation any property acquired within its boundaries by a public agency of another state for airport purposes and any income derived from such property to the extent that such other states authorize similar exemptions from taxation to municipalities of this state.

History: En. Sec. 16, Ch. 288, L. 1947; R.C.M. 1947, 1-823; amd. Sec. 17, Ch. 140, L. 1979.

CHAPTER 11

AIRPORT AUTHORITIES

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Sections 67-11-233 through 67-11-240 reserved.
67-11-241. No limitation on airport hazard zoning.

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67-11-301. Municipal tax levy.
67-11-302. County tax levy.
67-11-303. Bonds and obligations.
67-11-304. Sinking funds.
67-11-305. Federal and state money.
67-11-306. Tax exemption.

Part 4 — Extraterritorial Airports

67-11-401. Out-of-state airport jurisdiction — reciprocity.

Part 1

Organization and General Provisions

67-11-101. Short title. This chapter may be cited as the "Airport Authorities Act".

History: En. 1-925 by Sec. 24, Ch. 433, L. 1971; R.C.M. 1947, 1-925.

67-11-102. Municipal airport authority. Any municipality may, by resolution of its governing body, create a public body, corporate and politic, to be known as a municipal airport authority which shall be authorized to exercise its functions upon the appointment and qualification of the first commissioners thereof; or the governing body may by resolution determine to exercise any or all powers granted to such authorities in this chapter until or unless such powers are or have been conferred upon a municipal or regional airport authority. Upon the adoption of a resolution creating a municipal airport authority, the governing body of the municipality shall, pursuant to the resolution, appoint not less than five persons as commissioners of the authority. The commissioners who are first appointed shall be designated to serve for terms of 1, 2, 3, 4, and 5 years, respectively, but thereafter each commissioner shall be appointed for a term of 5 years, except that vacancies occurring otherwise than by expiration of the term shall be filled for the unexpired term by the governing body.

History: **En. 1-904 by Sec. 4, Ch. 433, L. 1971; amd. Sec. 1, Ch. 57, L. 1975; R.C.M. 1947, 1-904.**

67-11-103. Regional airport authority. (1) Two or more municipalities may by joint resolution create a public body, corporate and politic, to be known as a regional airport authority. The resolution creating a regional airport authority shall create a board of not less than five commissioners; the number to be appointed, their term and compensation, if any, shall be provided for in the resolution. Each such regional airport authority shall organize, select officers for terms to be fixed by agreement, and adopt and amend from time to time rules for its own procedure not inconsistent with 67-11-104.

(2) A regional airport authority may be increased from time to time to serve one or more additional municipalities if each additional municipality and each of the municipalities then included in the regional authority and the commissioners of the regional authority, respectively, adopt a joint resolution consenting thereto; provided that if a municipal airport authority for any municipality seeking to be included in the regional authority is then in existence, the commissioners of the municipal authority must consent to the inclusion of the municipality in the regional authority. Upon the inclusion of any municipality in the regional authority, all rights, contracts, obligations, and property, real and personal, of the municipal authority shall be in the name of and vest in the regional authority.

(3) A regional airport authority may be decreased if each of the municipalities then included in the regional authority and the commissioners of the regional authority consent to the decrease and make provisions for the retention or disposition of its assets and liabilities.

(4) A municipality shall not adopt any resolution authorized by this section without a public hearing thereon. Notice thereof shall be given at least 10 days prior thereto in a newspaper published in the municipality or, if there is no newspaper published therein, then in a newspaper having general circulation in the municipality.

(5) For the purpose of this chapter a regional airport authority shall have the same powers as all other political subdivisions in the adoption and enforcement of comprehensive airport zoning regulations as provided for by the laws of this state.

History: **En. 1-905, 1-909 by Secs. 5, 8, Ch. 433, L. 1971; R.C.M. 1947, 1-905, 1-909(part).**

67-11-104. Commissioners. (1) The powers of each authority shall be vested in the commissioners thereof. A majority of the commissioners of an authority shall constitute a quorum for the purpose of conducting business of the authority and exercising its powers and for all other purposes. Action may be taken by the authority upon a vote of not less than a majority of the commissioners present.

(2) There shall be elected a chairman and vice-chairman from among the commissioners. An authority may employ an executive director, secretary, technical experts, and such other officers, agents, and employees, permanent and temporary, as it may require and shall determine their qualifications, duties, and compensation. An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper.

(3) A commissioner of an authority shall be entitled to the necessary expense, including travel expenses, as provided for in 2-18-501 through 2-18-503, incurred in the discharge of his duties. Each commissioner shall hold office until his successor has been appointed and has qualified. The certificates of the appointment and reappointment of commissioners shall be filed with the authority.

History: En. 1-908 by Sec. 7, Ch. 433, L. 1971; amd. Sec. 4, Ch. 439, L. 1975; R.C.M. 1947, 1-908.

67-11-105. Functions — public and governmental. The acquisition of any land or interest therein, pursuant to this chapter; the planning, acquisition, establishment, development, construction, improvement, maintenance, equipment, operation, regulation, and protection of airports and air navigation facilities, including the acquisition or elimination of airport hazards, and the exercise of any powers herein granted to authorities and other public agencies to be severally or jointly exercised are hereby declared to be public and governmental functions, exercised for a public purpose, and matters of public necessity. All land and other property and privileges acquired and used by or on behalf of any authority or other public agency in the manner and for the purposes enumerated in this chapter shall and are hereby declared to be acquired and used for public and governmental purposes and as a matter of public necessity.

History: En. 1-919 by Sec. 18, Ch. 433, L. 1971; R.C.M. 1947, 1-919.

67-11-106. Cooperation of municipality. For the purpose of aiding and cooperating in the planning, undertaking, construction, or operation of airports and air navigation facilities pursuant to the provisions of this chapter, any municipality for which an authority has been created upon such terms, with or without consideration, as it may determine, may:

(1) lend or donate money to the authority;

(2) provide that all or a portion of the taxes or funds available or to become available to or required by law to be used by the municipality for airport purposes be transferred or paid directly to the airport authority as such funds become available to the municipality;

(3) cause water, sewer, or drainage facilities or any other facilities which it is empowered to provide to be furnished adjacent to or in connection with such airports or air navigation facilities;

(4) dedicate, sell, convey, or lease any of its interest in any property or grant easements, licenses, or any other rights or privileges therein to the authority;

(5) furnish, dedicate, close, pave, install, grade, regrade, plan or replan streets, roads, roadways, and walks from established streets or roads to such airports or air navigation facilities;

(6) do any and all things, whether or not specifically authorized in this section and not otherwise prohibited by law, that are necessary or convenient to aid and cooperate with the authority in the planning, undertaking, construction, or operation of airports and air navigation facilities; and

(7) enter into agreements with the authority respecting action to be taken by the municipality pursuant to the provisions of this section.

History: En. 1-921 by Sec. 20, Ch. 433, L. 1971; R.C.M. 1947, 1-921.

Part 2

Powers

67-11-201. General powers of authority. An authority shall have all the powers necessary or convenient to carry out the purposes of this chapter, including the power to certify annually to the governing bodies creating it the amount of tax to be levied by said governing bodies for airport purposes and including but not limited to the power to:

(1) sue and be sued, have a seal, and have perpetual succession;

(2) execute such contracts and other instruments and take such other action as may be necessary or convenient to carry out the purposes of this chapter;

(3) plan, establish, acquire, develop, construct, purchase, enlarge, improve, maintain, equip, operate, regulate, and protect airports and air navigation facilities, within this state and within any adjoining state, including the acquisition, construction, installation, equipment, maintenance, and operation at such airports or buildings and other facilities for the servicing of aircraft or for comfort and accommodation of air travelers and the purchase and sale of supplies, goods, and commodities as are incident to the operation of its airport properties. For such purposes an authority may, by purchase, gift, devise, lease, eminent domain proceedings, or otherwise, acquire property, real or personal, or any interest therein, including easements in airport hazards or land outside the boundaries of an airport or airport site, as is necessary to permit the removal, elimination, obstruction-marking, or obstruction-lighting of airport hazards or to prevent the establishment of airport hazards.

(4) establish comprehensive airport zoning regulations in accordance with the laws of this state;

(5) acquire, by purchase, gift, devise, lease, eminent domain proceedings, or otherwise, existing airports and air navigation facilities; provided, however, an authority shall not acquire or take over any airport or air navigation facility owned or controlled by another authority, a municipality, or public agency of this or any other state without the consent of such authority, municipality, or public agency;

(6) establish or acquire and maintain airports in, over, and upon any public waters of this state, any submerged lands under such public waters provided that the authority has obtained the approval of the owner or agency

that controls the water, and construct and maintain terminal buildings, landing floats, causeways, roadways, and bridges for approaches to or connecting with any such airport and landing floats and breakwaters for the protection thereof.

History: En. 1-909 by Sec. 8, Ch. 433, L. 1971; R.C.M. 1947, 1-909(part).

67-11-202. Rules. An authority is authorized to adopt, amend, and repeal such reasonable resolutions, rules, and orders as it shall deem necessary for the management, government, and use of any airport or air navigation facility owned by it or under its control. No rule, order, or standard prescribed by the commission shall be inconsistent with or contrary to any act of the congress of the United States or any regulation promulgated or standard established pursuant thereto. The authority shall keep on file at the principal office of the authority for public inspection a copy of all its rules.

History: En. 1-914 by Sec. 13, Ch. 433, L. 1971; R.C.M. 1947, 1-914.

67-11-203. Joint exercise of powers. (1) For the purposes of 67-11-203 through 67-11-205, unless otherwise qualified, the term "public agency" includes municipality and authority, each as defined in this title; any agency of the state government and of the United States; and any municipality, political subdivision, or agency of an adjoining state. The term "governing body" includes commissioners of an authority, the governing body of a municipality, and the head of an agency of a state or the United States if the public agency is other than an authority or municipality.

(2) All powers, privileges, and authority granted by this chapter may be exercised and enjoyed by an authority jointly with any public agency of this state and jointly with any public agency of any adjoining state or of the United States to the extent that the laws of such other state or of the United States permit such joint exercise or enjoyment. Any agency of the state government, when acting jointly with any authority, may exercise and enjoy all the powers, privileges, and authority conferred by this chapter upon an authority.

(3) Any two or more public agencies may enter into agreements with each other for joint action pursuant to the provisions of 67-11-203 through 67-11-205. Each agreement shall specify its duration; the proportionate interest which each public agency will have in the property, facilities, and privileges involved in the joint undertaking; the proportion of costs of operation, capital outlay, and maintenance to be borne by each public agency; and such other terms as are considered necessary or required by law. The agreement may also provide for amendments and termination; disposal of all or any of the property, facilities, and privileges jointly owned prior to or at such times as the property, facilities, and privileges or any part thereof cease to be used for the purposes provided in this chapter or upon termination of the agreement; the distribution of the proceeds received upon any disposal and of any funds or other property jointly owned and undisposed of; the assumption of payment of any indebtedness arising from the joint undertaking which remains unpaid upon the disposal of all assets or upon a termination of the agreement; and such other provisions as may be necessary or convenient.

History: En. 1-918 by Sec. 17, Ch. 433, L. 1971; amd. Sec. 8, Ch. 232, L. 1977; R.C.M. 1947, 1-918(1), (2).

67-11-204. Joint board. (1) Public agencies acting jointly pursuant to 67-11-203 through 67-11-205 shall create a joint board which shall consist of members appointed by the governing body of each participating public agency. The number to be appointed and their term and compensation, if any, shall be provided for in the joint agreement. Each joint board shall organize, select officers for such terms as are fixed by the agreement, and adopt and amend from time to time rules for its own procedure. The joint board, as agent of the participating public agencies, may plan, acquire, establish, develop, construct, enlarge, improve, maintain, equip, operate, regulate, protect, and police any airport or air navigation facility or airport hazard to be jointly acquired, controlled, and operated; and the board may be authorized by the participating public agencies to exercise on behalf of its constituent public agencies all the powers of each with respect to the airport, air navigation facility, or airport hazard, subject to the limitations of subsection (2) of this section.

(2) (a) The total expenditures to be made by the joint board for any purpose in any calendar year shall be as determined by a budget approved by the constituent public agencies on or before the preceding June 10 or as otherwise specifically authorized by the constituent public agencies.

(b) No airport, air navigation facility, airport hazard, or real or personal property, the cost of which is in excess of sums fixed therefor by the joint agreement or allotted in the annual budget, may be acquired, established, or developed by the joint board without the approval of the governing bodies of its constituent public agencies.

(c) Eminent domain proceedings under 67-11-203 through 67-11-205 may be instituted by the joint board only by authority of the governing bodies of the constituent public agencies of the joint board. If so authorized, such proceedings shall be instituted in the names of the constituent public agencies jointly, and the property so acquired shall be held by the public agencies as tenants in common.

(d) The joint board may not dispose of any airport, air navigation facility, or real property under its jurisdiction except with the consent of the governing bodies of its constituent public agencies. However, the joint board may, without such consent, enter into contracts, leases, or other arrangements contemplated by 67-11-211.

(e) Resolutions, rules, or orders of the joint board dealing with subjects authorized by 67-11-211 become effective only upon approval of the governing bodies of the constituent public agencies. However, upon such approval, the resolutions, rules, or orders of the joint board shall have the same force in the territories or jurisdictions involved as the ordinances, resolutions, rules, or orders of each public agency would have in its own territory or jurisdiction.

History: En. 1-918 by Sec. 17, Ch. 433, L. 1971; amd. Sec. 8, Ch. 232, L. 1977; R.C.M. 1947, 1-918(3), (4).

67-11-205. Joint fund. For the purpose of providing the joint board with moneys for the necessary expenditures in carrying out the provisions of 67-11-203 through 67-11-205, a joint fund shall be created and maintained, into which shall be deposited the share of each of the constituent public agencies as provided by the joint agreement. Any federal, state, or other grants, contributions, or loans and the revenues obtained from the joint ownership, control, and operation of any airport or air navigation facility under the jurisdiction of the joint board shall be paid into the joint fund. Disbursements from such fund shall be made by order of the board, subject to the limitations prescribed in 67-11-204(2).

History: En. 1-918 by Sec. 17, Ch. 433, L. 1971; amd. Sec. 8, Ch. 232, L. 1977; R.C.M. 1947, 1-918(5).

67-11-206. Supplementary powers. In addition to the general and special powers conferred by this chapter, every authority is authorized to exercise such powers as are necessary incidental to the exercise of such general and special powers.

History: En. 1-923 by Sec. 22, Ch. 433, L. 1971; R.C.M. 1947, 1-923.

67-11-207 through 67-11-210 reserved.

67-11-211. Granting of operation and use privileges. (1) In connection with the operation of an airport or air navigation facility owned or controlled by an authority, the authority may enter into contracts, leases, and other arrangements for terms not to exceed 30 years with any persons:

(a) granting the privilege of using or improving the airport or air navigation facility or any portion or facility thereof or space therein for commercial purposes;

(b) conferring the privilege of supplying goods, commodities, things, services, or facilities at the airport or air navigation facility; and

(c) making available services to be furnished by the authority or its agents at the airport or air navigation facility.

(2) In each case the authority may establish the terms and conditions and fix the charges, rentals, or fees for the privileges or services, which must be reasonable and uniform for the same class of privilege or service and must be established with due regard to the property and improvements used and the expenses of operation to the authority; provided that in no case may the public be deprived of its rightful, equal, and uniform use of the airport, air navigation facility, or portion of facility thereof.

(3) Except as may be limited by the terms and conditions of any grant, loan, or agreement authorized by 67-11-305, an authority may by contract, lease, or other arrangement, upon a consideration fixed by it, grant to any qualified person for a term not to exceed 30 years the privilege of operating, as agent of the authority or otherwise, any airport owned or controlled by the authority; provided that no person may be granted any authority to operate an airport other than as a public airport or to enter into any contracts, leases, or other arrangements in connection with the operation of the airport which the authority might not have undertaken under subsections (1) and (2) of this section.

History: En. 1-913 by Sec. 12, Ch. 433, L. 1971; R.C.M. 1947, 1-913; amd. Sec. 18, Ch. 140, L. 1979.

67-11-212 through 67-11-220 reserved.

67-11-221. Exercise of airport authority powers by department — exceptions. The department shall have all powers of an airport authority, except powers to certify or levy taxes or issue bonds, for constructing and operating public airports or landing fields near international border ports of entry and near state or national parks or near or in recreational areas as the department may determine to be in the public interest.

History: En. 1-902 by Sec. 2, Ch. 433, L. 1971; amd. Sec. 43, Ch. 348, L. 1974; R.C.M. 1947, 1-902.

67-11-222. Department control of airport operation and income. The department may control the operation of airports constructed under the provisions of 67-11-221 and may provide for the imposition of landing fees, granting of fuel and service concessions, or the lease of portions of the premises for other related airport services or for purposes not inconsistent with the use of the premises for airport purposes. All income from the operation of such airports shall be deposited in the state treasury in the airport operating account within the revolving fund. All expenditures from the account shall be within the limits of legislative appropriations and shall be made upon vouchers signed and approved by the director of the department.

History: En. 1-903 by Sec. 3, Ch. 433, L. 1971; amd. Sec. 44, Ch. 348, L. 1974; amd. Sec. 6, Ch. 232, L. 1977; R.C.M. 1947, 1-903.

67-11-223 through 67-11-230 reserved.

67-11-231. Airport property — acquisition by eminent domain. In the acquisition of property by eminent domain proceedings authorized by this chapter, an airport authority shall proceed in the manner provided by the laws of this state and such other laws that may now or hereafter apply to the state or to political subdivisions of this state in exercising the right of eminent domain. The municipality shall not be precluded from abandoning such proceedings in any case where possession of the property has not been taken.

History: En. 1-910 by Sec. 9, Ch. 433, L. 1971; R.C.M. 1947, 1-910.

67-11-232. Airport property — disposal. Except as may be limited by the terms and conditions of any grant, loan, or agreement authorized by 67-11-305, an authority may, by sale, lease, or otherwise, dispose of any airport, air navigation facility, or other property or portion thereof or interest therein acquired pursuant to this chapter. Such disposal by sale, lease, or otherwise shall be in accordance with the laws of this state governing the disposition of other public property, except that in the case of disposal to another authority, a municipality, or an agency of the state or federal government for use and operation as a public airport, the sale, lease, or other disposal may be effected in such manner and upon such terms as the commissioners of the authority may deem in the best interest of civil aviation.

History: En. 1-911 by Sec. 10, Ch. 433, L. 1971; R.C.M. 1947, 1-911.

67-11-233 through 67-11-240 reserved.

67-11-241. No limitation on airport hazard zoning. Nothing contained in this chapter shall be construed to limit any right, power, or authority of a municipality to regulate airport hazards by zoning.

History: En. 1-924 by Sec. 23, Ch. 433, L. 1971; R.C.M. 1947, 1-924.

Part 3

Finance

67-11-301. Municipal tax levy. The airport authority may certify annually to the governing bodies the amount of tax to be levied by each municipality participating in the creation of the airport authority, and the municipality shall levy the amount certified, pursuant to provisions of law authorizing cities and other political subdivisions of this state to levy taxes for airport purposes. The levy made shall not exceed the maximum levy permitted by the laws of this state for airport purposes or any such lower limit as may have been established by the municipality or municipalities in the resolution creating the authority. The municipality shall collect the taxes certified by an airport authority in the same manner as other taxes are levied and collected and make payment to the airport authority. The proceeds of such taxes when and as paid to the airport authority shall be deposited in a special account or accounts in which other revenues of the authority are deposited and may be expended by the authority as provided for in this chapter. Prior to the issuance of bonds under 67-11-303, the airport authority or the municipality may by resolution covenant and agree that the total amount of such taxes then authorized by law, or such portion thereof as may be specified by the resolution, will be certified, levied, and deposited annually as herein provided until the bonds and interest thereon are fully paid.

History: **En. 1-916 by Sec. 15, Ch. 433, L. 1971; amd. Sec. 2, Ch. 501, L. 1973; R.C.M. 1947, 1-916.**

67-11-302. County tax levy. In counties supporting airports or airport authorities, a levy as provided for in 67-10-402 may be made for such purposes.

History: **En. 1-917 by Sec. 16, Ch. 433, L. 1971; R.C.M. 1947, 1-917.**

67-11-303. *(Temporary)* **Bonds and obligations.** (1) An authority may borrow money for any of its corporate purposes and issue its bonds therefor, including refunding bonds, in such form and upon such terms as it may determine, payable out of any revenues of the authority, including revenues derived from:

(a) an airport or air navigation facility or facilities;
(b) taxes levied pursuant to 67-11-301 or other law for airport purposes;
(c) grants or contributions from the federal government; or
(d) other sources.

(2) The bonds may be issued by resolution of the authority, without an election and without any limitation of amount, except that no such bonds may be issued at any time if the total amount of principal and interest to become due in any year on such bonds and on any then outstanding bonds for which revenues from the same source or sources are pledged exceeds the amount of such revenues to be received in that year as estimated in the resolution authorizing the issuance of the bonds. The authority shall take all action necessary and possible to impose, maintain, and collect rates, charges, rentals, and taxes, if any are pledged, sufficient to make the revenues from the pledged source in such year at least equal to the amount of such principal and interest due in that year.

(3) The bonds may be sold at public or private sale and may bear interest at a rate not exceeding the limitation of 17-5-102. Except as otherwise provided herein, any bonds issued pursuant to this chapter by an authority may be payable as to principal and interest solely from revenues of the authority and shall state on their face the applicable limitations or restrictions regarding the source from which such principal and interest are payable.

(4) Bonds issued by an authority or municipality pursuant to the provisions of this chapter are declared to be issued for an essential public and governmental purpose by a political subdivision within the meaning of 15-30-111(2)(a).

(5) For the security of any such bonds, the authority or municipality may by resolution make and enter into any covenant, agreement, or indenture and may exercise any additional powers authorized to be exercised by a municipality under Title 7, chapter 7, parts 44 and 45. The sums required from time to time to pay principal and interest and to create and maintain a reserve for the bonds may be paid from any revenues referred to in this chapter, prior to the payment of current costs of operation and maintenance of the facilities.

(6) Subject to the conditions stated in this subsection (6), the governing body of any municipality having a population in excess of 10,000, with respect to bonds issued pursuant to this chapter by the municipality or by an authority in which the municipality is included, may by resolution covenant that in the event that at any time all revenues, including taxes, appropriated and collected for such bonds are insufficient to pay principal or interest then due, it will levy a general tax upon all of the taxable property in the municipality for the payment of such deficiency; and may further covenant that at any time a deficiency is likely to occur within 1 year for the payment of principal and interest due on such bonds, it will levy a general tax upon all the taxable property in the municipality for the payment of such deficiency, and such taxes are not subject to any limitation of rate or amount applicable to other municipal taxes but are limited to a rate estimated to be sufficient to produce the amount of the deficiency. In the event more than one municipality having a population in excess of 10,000 is included in an authority issuing bonds pursuant to this chapter, the municipalities may apportion the obligation to levy taxes for the payment of, or in anticipation of, a deficiency in the revenues appropriated for such bonds in such manner as the municipalities may determine. The resolution shall state the principal amount and purpose of the bonds and the substance of the covenant respecting deficiencies. No such resolution becomes effective until the question of its approval has been submitted to the qualified electors of the municipality at a special election called for that purpose by the governing body of the municipality and a majority of the electors voting on the question have voted in favor thereof. The notice and conduct of the election is governed, to the extent applicable, as provided for municipal general obligation bonds in chapter 7, part 42, for an election called by cities and towns, and as provided for county general obligation bonds in chapter 7, part 22, for an election called by counties. If a majority of the electors voting thereon vote against approval of the resolution, the municipality has no authority to make the covenant or to levy a tax for the payment of deficiencies pursuant to this section, but such municipality or authority may nevertheless issue bonds

under this chapter payable solely from the sources referred to in subsection (1) above.

67-11-303. *(Effective July 1, 1983)* **Bonds and obligations.** (1) An authority may borrow money for any of its corporate purposes and issue its bonds therefor, including refunding bonds, in such form and upon such terms as it may determine, payable out of any revenues of the authority, including revenues derived from:

(a) an airport or air navigation facility or facilities;

(b) taxes levied pursuant to 67-11-301 or other law for airport purposes;

(c) grants or contributions from the federal government; or

(d) other sources.

(2) The bonds may be issued by resolution of the authority, without an election and without any limitation of amount, except that no such bonds may be issued at any time if the total amount of principal and interest to become due in any year on such bonds and on any then outstanding bonds for which revenues from the same source or sources are pledged exceeds the amount of such revenues to be received in that year as estimated in the resolution authorizing the issuance of the bonds. The authority shall take all action necessary and possible to impose, maintain, and collect rates, charges, rentals, and taxes, if any are pledged, sufficient to make the revenues from the pledged source in such year at least equal to the amount of such principal and interest due in that year.

(3) The bonds may be sold at public or private sale and may bear interest at a rate not exceeding 10% a year. Except as otherwise provided herein, any bonds issued pursuant to this chapter by an authority may be payable as to principal and interest solely from revenues of the authority and shall state on their face the applicable limitations or restrictions regarding the source from which such principal and interest are payable.

(4) Bonds issued by an authority or municipality pursuant to the provisions of this chapter are declared to be issued for an essential public and governmental purpose by a political subdivision within the meaning of 15-30-111(2)(a).

(5) For the security of any such bonds, the authority or municipality may by resolution make and enter into any covenant, agreement, or indenture and may exercise any additional powers authorized to be exercised by a municipality under Title 7, chapter 7, parts 44 and 45. The sums required from time to time to pay principal and interest and to create and maintain a reserve for the bonds may be paid from any revenues referred to in this chapter, prior to the payment of current costs of operation and maintenance of the facilities.

(6) Subject to the conditions stated in this subsection (6), the governing body of any municipality having a population in excess of 10,000, with respect to bonds issued pursuant to this chapter by the municipality or by an authority in which the municipality is included, may by resolution covenant that in the event that at any time all revenues, including taxes, appropriated and collected for such bonds are insufficient to pay principal or interest then due, it will levy a general tax upon all of the taxable property in the municipality for the payment of such deficiency; and may further covenant that at any time a deficiency is likely to occur within 1 year for the

payment of principal and interest due on such bonds, it will levy a general tax upon all the taxable property in the municipality for the payment of such deficiency, and such taxes are not subject to any limitation of rate or amount applicable to other municipal taxes but are limited to a rate estimated to be sufficient to produce the amount of the deficiency. In the event more than one municipality having a population in excess of 10,000 is included in an authority issuing bonds pursuant to this chapter, the municipalities may apportion the obligation to levy taxes for the payment of, or in anticipation of, a deficiency in the revenues appropriated for such bonds in such manner as the municipalities may determine. The resolution shall state the principal amount and purpose of the bonds and the substance of the covenant respecting deficiencies. No such resolution becomes effective until the question of its approval has been submitted to the qualified electors of the municipality at a special election called for that purpose by the governing body of the municipality and a majority of the electors voting on the question have voted in favor thereof. The notice and conduct of the election is governed, to the extent applicable, as provided for municipal general obligation bonds in chapter 7, part 42, for an election called by cities and towns, and as provided for county general obligation bonds in chapter 7, part 22, for an election called by counties. If a majority of the electors voting thereon vote against approval of the resolution, the municipality has no authority to make the covenant or to levy a tax for the payment of deficiencies pursuant to this section, but such municipality or authority may nevertheless issue bonds under this chapter payable solely from the sources referred to in subsection (1) above.

History: En. 1-912 by Sec. 11, Ch. 433, L. 1971; amd. Sec. 1, Ch. 501, L. 1973; amd. Sec. 7, Ch. 232, L. 1977; R.C.M. 1947, 1-912; amd. Sec. 19, Ch. 140, L. 1979; amd. Sec. 15, Ch. 500, L. 1981; amd. Sec. 179, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 500 substituted "the limitation of 17-5-102" for "10% a year" after "not exceeding" in the first sentence of (3).

Chapter 575 substituted "as provided for municipal general obligation bonds in chapter 7, part 42" for "by [7-7-4227 through 7-7-4234]" and "as provided for county general obligation bonds in chapter 7, part 22" for "[7-7-2229 through 7-7-2236]" near the end of (6).

Effective Date — Termination: Section 21, Ch. 500, L. 1981, provided: "This act is effective on passage and approval and terminates on July 1, 1983." Approved April 23, 1981.

67-11-304. Sinking funds. An airport authority may create a sinking fund and accumulate therein the sum of $5 million together with interest thereon for the use, repairs, maintenance, and capital outlays of an airport.

History: En. 1-906 by Sec. 6, Ch. 433, L. 1971; amd. Sec. 1, Ch. 86, L. 1975; R.C.M. 1947, 1-906.

67-11-305. Federal and state money. (1) An authority may accept, receive, receipt for, and spend federal and state moneys and other moneys, public or private, made available by grant or loan, to accomplish any of the purposes of this chapter. All federal moneys accepted under this section shall be accepted and spent by the authority upon terms and conditions prescribed by the United States and consistent with state law. All state moneys accepted under this section shall be accepted and spent by the authority upon terms and conditions prescribed by the state.

(2) An authority may designate the department as its agent to accept, receive, receipt for, and disburse federal and state moneys and other moneys,

public or private, made available by grant or loan, to accomplish in whole or in part any of the purposes of this chapter and may designate the department as its agent in contracting for and supervising the planning, acquisition, development, construction, improvement, maintenance, equipment, or operation of any airport or other air navigation facility. An authority may enter into an agreement with the department prescribing the terms and conditions of the agency in accordance with terms and conditions prescribed by the United States, if federal money is involved, and in accordance with the applicable laws of this state. All federal moneys accepted under this section by the department shall be accepted and transferred or spent by the department upon terms and conditions prescribed by the United States. All moneys received by the department under this subsection shall be deposited in the state treasury and, unless otherwise prescribed by the agency from which the moneys were received, shall be kept in separate funds designated according to the purposes for which the moneys were made available and held by the state in trust for those purposes.

History: **En. 1-915 by Sec. 14, Ch. 433, L. 1971; amd. Sec. 45, Ch. 348, L. 1974; R.C.M. 1947, 1-915.**

67-11-306. Tax exemption. Any property in this state acquired by an authority for airport purposes, pursuant to the provisions of this chapter, and any income derived by the authority from the ownership, operation, or control thereof shall be exempt from taxation to the same extent as other property used for public purpose.

History: **En. 1-920 by Sec. 19, Ch. 433, L. 1971; R.C.M. 1947, 1-920.**

Part 4

Extraterritorial Airports

67-11-401. Out-of-state airport jurisdiction — reciprocity. (1) This section may be cited as the "Extraterritorial Airports Section".

(2) For the purpose of this section, "governmental agency" means any municipality, city, town, county, public corporation, or other public agency.

(3) This state or any governmental agency of this state having any powers with respect to planning, establishing, acquiring, developing, constructing, enlarging, improving, maintaining, equipping, operating, regulating, or protecting airports or air navigation facilities within this state may exercise those powers within any state or jurisdiction adjoining this state, subject to the laws of that state or jurisdiction.

(4) Any state adjoining this state or any governmental agency thereof may plan, establish, acquire, develop, construct, enlarge, improve, maintain, equip, operate, regulate, and protect airports and air navigation facilities within this state, subject to the laws of this state applicable to airports and air navigation facilities. The adjoining state or governmental agency shall have the power of eminent domain in this state, which shall be exercised in the manner provided by the laws of this state governing condemnation proceedings, provided that the power of eminent domain shall not be exercised unless the adjoining state authorizes the exercise of that power therein by this state or any governmental agency thereof having any of the powers mentioned in this section.

(5) The powers granted in this section may be exercised jointly by two or more states or governmental agencies, including this state and its governmental agencies, in such combination as may be agreed upon by them.

History: **En. 1-922 by Sec. 21, Ch. 433, L. 1971; R.C.M. 1947, 1-922.**

TITLE 68

RESERVED

TITLE 69

PUBLIC UTILITIES AND CARRIERS

Ch.
1. Structure and Organization of State Agencies.
2. General Regulatory Provisions.
3. Regulation of Utilities.
4. Utility Lines and Facilities.
5. Power and Energy Companies.
6. Communication Utilities.
7. Municipal Utilities.
Chapters 8 through 10 reserved.
11. Regulation of Carriers.
12. Motor Carriers.
13. Pipeline Carriers.
14. Railroads.

CHAPTER 1

STRUCTURE AND ORGANIZATION OF STATE AGENCIES

Part 1 — Public Service Commission

Section
69-1-101. Definition of commission.
69-1-102. Creation of public service commission.
69-1-103. Composition of commission.
69-1-104. Public service commission districts.
69-1-105. Term of office.
69-1-106. Vacancies.
69-1-107. Chairman of commission.
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69-1-110. Conduct of commission business.
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69-1-221. Staff of consumer counsel.
69-1-222. Annual report.
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69-1-224. Determination of fee.
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69-1-226. Failure to pay fee — penalty and interest — collection of fee.
69-1-227. Warrant for distraint.

Chapter Cross-References

Pacific Northwest Electric Power and Conservation Planning Council, Title 90, ch. 4, part 4.

Part 1

Public Service Commission

69-1-101. Definition of commission. As used in this title, the term "commission" means the public service commission provided for in 2-15-2602.

History: En. by Code Commissioner, 1979.

69-1-102. Creation of public service commission. A public service commission is hereby created, whose duty it is to supervise and regulate the operations of public utilities, common carriers, railroads, and other regulated industries listed in this title. Such supervision and regulation shall be in conformity with this title.

History: En. Sec. 1, Ch. 52, L. 1913; re-en. Sec. 3879, R.C.M. 1921; re-en. Sec. 3879, R.C.M. 1935; amd. Sec. 1, Ch. 339, L. 1974; R.C.M. 1947, 70-101(part); amd. Sec. 1, Ch. 43, L. 1979.

69-1-103. Composition of commission. The commission shall consist of five members, who shall be qualified electors of the district from which they are elected, with each such member elected from a separate district of the state.

History: En. Sec. 1, Ch. 52, L. 1913; re-en. Sec. 3879, R.C.M. 1921; re-en. Sec. 3879, R.C.M. 1935; amd. Sec. 1, Ch. 339, L. 1974; R.C.M. 1947, 70-101(part).

69-1-104. Public service commission districts. In this state there are five public service commission districts, with one commissioner elected from each district, distributed as follows:

(1) first district: Blaine, Chouteau, Daniels, Dawson, Fergus, Garfield, Glacier, Golden Valley, Hill, Liberty, McCone, Musselshell, Petroleum, Phillips, Pondera, Prairie, Richland, Roosevelt, Sheridan, Toole, Valley, and Wibaux Counties;

(2) second district: Big Horn, Carbon, Carter, Custer, Fallon, Powder River, Rosebud, Stillwater, Sweetgrass, Treasure, and Yellowstone Counties;

(3) third district: Broadwater, Cascade, Jefferson, Judith Basin, Lewis and Clark, Meagher, Teton, and Wheatland Counties;

(4) fourth district: Beaverhead, Deer Lodge, Gallatin, Granite, Madison, Park, Powell, Ravalli, and Silver Bow Counties;

(5) fifth district: Flathead, Lake, Lincoln, Mineral, Missoula, and Sanders Counties.

History: En. 70-101.1 by Sec. 2, Ch. 339, L. 1974; R.C.M. 1947, 70-101.1.

69-1-105. Term of office. (1) Every term shall be for a period of 4 years. Said commissioners when elected will qualify at the time and in the manner provided by law for other state officers and shall take office on the first Monday of January, next after their election.

(2) Each of said members of said commission, so elected, shall serve until his successor is elected and qualified.

History: En. Sec. 1, Ch. 52, L. 1913; re-en. Sec. 3879, R.C.M. 1921; re-en. Sec. 3879, R.C.M. 1935; amd. Sec. 1, Ch. 339, L. 1974; R.C.M. 1947, 70-101(part).

69-1-106. Vacancies. Any vacancy occurring in the commission shall be filled by appointment by the governor. Such appointee shall hold office until the next general election and until his successor is elected and qualified. At the biennial election following the occurrence of any vacancy in the commission, there shall be elected one member to fill out the unexpired term for which such vacancy exists.

History: En. Sec. 1, Ch. 52, L. 1913; re-en. Sec. 3879, R.C.M. 1921; re-en. Sec. 3879, R.C.M. 1935; amd. Sec. 1, Ch. 339, L. 1974; R.C.M. 1947, 70-101(part).

69-1-107. Chairman of commission. A chairman shall be selected by the commission from its membership at the first meeting of each year after a general election.

History: En. Sec. 1, Ch. 52, L. 1913; re-en. Sec. 3879, R.C.M. 1921; re-en. Sec. 3879, R.C.M. 1935; amd. Sec. 1, Ch. 339, L. 1974; R.C.M. 1947, 70-101(part).

69-1-108. Secretary of commission. (1) The commission shall, immediately after its members have qualified, appoint a secretary to serve during the pleasure of the commission. The secretary shall be a qualified elector of the state.

(2) The secretary shall:

(a) keep a full and complete record of all proceedings of the commission;

(b) be the custodian of its records and file and preserve at the office of the commission all books, maps, documents, and papers entrusted to his care and be responsible to the commission for the same; and

(c) perform such other duties as the commission may prescribe.

History: (1)En. Sec. 5, Ch. 37, L. 1907; Sec. 4367, Rev. C. 1907; re-en. Sec. 3783, R.C.M. 1921; rep. in part by Ch. 176, L. 1931; re-en. Sec. 3783, R.C.M. 1935; Sec. 72-105, R.C.M. 1947; (2)En. Sec. 9, Ch. 37, L. 1907; Sec. 4371, Rev. C. 1907; re-en. Sec. 3790, R.C.M. 1921; re-en. Sec. 3790, R.C.M. 1935; Sec. 72-112, R.C.M. 1947; R.C.M. 1947, 72-105(part), 72-112; amd. Sec. 2, Ch. 43, L. 1979.

69-1-109. Employment of personnel. The commission shall also have the power to appoint stenographers, inspectors, experts, and other persons whenever deemed expedient or necessary by said commission to the proper performance of its duties.

History: En. Sec. 5, Ch. 37, L. 1907; Sec. 4367, Rev. C. 1907; re-en. Sec. 3783, R.C.M. 1921; rep. in part by Ch. 176, L. 1931; re-en. Sec. 3783, R.C.M. 1935; R.C.M. 1947, 72-105(part).

69-1-110. Conduct of commission business. (1) The commission shall hold sessions at times and places in this state as may be expedient. A majority of the commission constitutes a quorum for the transaction of business.

(2) The members of the commission may administer oaths and affirmations.

(3) The commission may adopt rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings concerning railroad companies and other parties before it in the establishment of rates, orders, charges, and other acts required of it under the law.

History: En. Sec. 3, Ch. 37, L. 1907; Sec. 4365, Rev. C. 1907; re-en. Sec. 3781, R.C.M. 1921; re-en. Sec. 3781, R.C.M. 1935; amd. Sec. 10, Ch. 315, L. 1974; R.C.M. 1947, 72-103.

69-1-111. Reimbursement for expenses. The commission, secretary, and such clerks, experts, and persons as may be employed shall be entitled to receive from the state their expenses while traveling on the business of the commission, as provided for in 2-18-501 through 2-18-503. Such expenditure shall be sworn to by the person who incurred the expenses and be approved by the chairman of the commission or his designee.

History: Ap. p. Sec. 32, Ch. 52, L. 1913; re-en. Sec. 3912, R.C.M. 1921; re-en. Sec. 3912, R.C.M. 1935; amd. Sec. 47, Ch. 439, L. 1975; amd. Sec. 1, Ch. 205, L. 1977; Sec. 70-134, R.C.M. 1947; Ap. p. Sec. 7, Ch. 37, L. 1907; Sec. 4369, Rev. C. 1907; re-en. Sec. 3785, R.C.M. 1921; re-en. Sec. 3785, R.C.M. 1935; amd. Sec. 11, Ch. 315, L. 1974; amd. Sec. 49, Ch. 439, L. 1975; Sec. 72-107, R.C.M. 1947; R.C.M. 1947, 70-134, 72-107.

69-1-112. Prohibition on acceptance of favors from railroads. (1) A public service commissioner or the secretary may not, directly or indirectly, solicit or request from or recommend to any railroad corporation or any officer, attorney, or agent thereof the appointment of any person to any place or position; nor shall any railroad corporation or its attorney or agent offer any place, appointment, or position or other consideration to such commissioners or to any clerks or employees of the commission; neither shall the commissioners or their secretary, clerks, agents, employees, or experts accept, receive, or request any pass from any railroad in this state, for themselves or for any other person, except as herein otherwise provided, or any present, gift, or gratuity of any kind from any railroad corporation.

(2) The request or acceptance by them, except as herein specified, of any such place or position, pass, present, gift, or other gratuity shall work a forfeiture of the office of the commissioner, secretary, clerk, agent, employee, or expert requesting or accepting the same. Any person violating any of the provisions of this section is guilty of a misdemeanor.

History: En. Sec. 31, Ch. 37, L. 1907; Sec. 4394, Rev. C. 1907; re-en. Sec. 3813, R.C.M. 1921; re-en. Sec. 3813, R.C.M. 1935; amd. Sec. 14, Ch. 315, L. 1974; R.C.M. 1947, 72-136.

69-1-113. Removal or suspension of commissioner. If any commissioner fails to perform his duties as provided in this title, he may be removed from office as provided by 45-7-401. Upon complaint made and good cause shown, the governor may suspend any commissioner, and if, in his judgment the exigencies of the case require, the governor may appoint temporarily some competent person to perform the duties of the suspended commissioner during the period of the suspension.

History: En. Sec. 34, Ch. 37, L. 1907; Sec. 4397, Rev. C. 1907; re-en. Sec. 3816, R.C.M. 1921; re-en. Sec. 3816, R.C.M. 1935; R.C.M. 1947, 72-139(part); amd. Sec. 3, Ch. 43, L. 1979.

Part 2

Consumer Committee and Consumer Counsel

69-1-201. Definitions. As used in this part and part 2 of chapter 2, the following definitions apply:

(1) "Committee" means the legislative consumer committee provided for in Title 5, chapter 15, part 1.

(2) "Consumer counsel" means the consumer counsel provided for in Title 5, chapter 15, part 2.

(3) "Regulated companies" means all those organizations, corporations, associations, or other public or private entities which now are or may hereafter become subject to regulation in any manner by the department of public service regulation or the public service commission or any successor agency.

History: **Ap. p. Sec. 2, Ch. 65, L. 1973; Sec. 70-702, R.C.M. 1947; (2)En. by Code Commissioner, 1979; R.C.M. 1947, 70-702(part).**

69-1-202 through 69-1-210 reserved.

69-1-211. Meetings of committee. The committee shall meet at least once each quarter to advise and consult with the consumer counsel.

History: **En. Sec. 4, Ch. 65, L. 1973; amd. Sec. 1, Ch. 341, L. 1974; amd. Sec. 7, Ch. 103, L. 1977; R.C.M. 1947, 70-704(part).**

69-1-212. Compensation of committee members. Committee members are entitled to receive compensation and expenses as provided in 5-2-302.

History: **En. Sec. 4, Ch. 65, L. 1973; amd. Sec. 1, Ch. 341, L. 1974; amd. Sec. 7, Ch. 103, L. 1977; R.C.M. 1947, 70-704(part).**

69-1-213 through 69-1-220 reserved.

69-1-221. Staff of consumer counsel. The consumer counsel may, with the approval of the committee, appoint employees and consultants necessary to carry out the provisions of this part and part 2 of chapter 2, within the limits of legislative appropriation.

History: **En. Sec. 6, Ch. 65, L. 1973; R.C.M. 1947, 70-706.**

69-1-222. Annual report. The consumer counsel shall prepare and submit a yearly report and such other interim reports he determines advisable concerning his activities during the year and may recommend appropriate remedial legislation to the committee.

History: **En. Sec. 7, Ch. 65, L. 1973; amd. Sec. 2, Ch. 341, L. 1974; amd. Sec. 2, Ch. 138, L. 1975; amd. Sec. 1, Ch. 136, L. 1977; R.C.M. 1947, 70-707(7).**

69-1-223. Funding of office of consumer counsel. (1) There is an account in the earmarked revenue fund to which all fees collected hereunder shall be deposited and from which all appropriations to the office of the consumer counsel shall be paid. An appropriation to the office of the consumer counsel may consist of a base appropriation for regular operating expenses and a contingency appropriation for expenses due to an unanticipated caseload.

(2) In addition to all other licenses, fees, and taxes imposed by law, all regulated companies shall:

(a) within 90 days after the close of each calendar quarter, file with the department of public service regulation and the department of revenue a statement, in such form as the commission may determine, showing the gross operating revenue from all activities regulated by the commission within the state for that calendar quarter of operation or portion thereof; and

(b) at that time pay to the department of revenue a fee based on a percentage of the gross operating revenue reported, as determined by the department of revenue under 69-1-224.

(3) The amount of money which may be raised by the fee on the regulated companies during a fiscal year may not be increased from the amount appropriated, including both base and contingency appropriations, by the legislature for that fiscal year. Any additional money required for operation of the office of the consumer counsel must be obtained from other sources in a manner authorized by the legislature.

History: En. Sec. 9, Ch. 65, L. 1973; amd. Sec. 1, Ch. 319, L. 1974; R.C.M. 1947, 70-709(1), (2); amd. Sec. 1, Ch. 280, L. 1979.

69-1-224. Determination of fee. (1) Within 30 days following enactment of the legislative appropriation for the office of the consumer counsel, the department of revenue shall:

(a) determine the total gross operating revenue generated by all regulated activities within this state for all regulated companies for the previous fiscal year;

(b) compute the percentage, subject to revision as provided in subsection (3), of the amount determined in subsection (1)(a) which will produce an amount equal to the base appropriation to the office of the consumer counsel for the first year of the appropriation, except that no regulated company owned and operated by any municipal corporation within this state shall be required to pay a sum in excess of .06 of 1% of its gross operating revenue; and

(c) give notice by mail to each regulated company of the percentage determined in subsections (1)(a) and (b) to be applied to the gross operating revenue reported under 69-1-223(2) to determine the amount of the fee to be paid in the first year of the appropriation.

(2) On or before May 30 of the first year of the biennium, the department of revenue shall repeat the steps required by subsection (1) and compute the percentage multiplier for the second year, giving notice to the regulated companies.

(3) (a) The department of revenue may adjust the percentage multiplier quarterly if the department considers a change necessary to meet or to not exceed the amount to be raised by the fee because of:

(i) fluctuations in the actual gross operating revenue subject to the fee; or

(ii) submission and approval of a budget amendment authorizing the spending of money from a contingency appropriation included in the appropriation measure for the office of the consumer counsel and authorized to be raised by means of the fee.

(b) Adjustments of the percentage multiplier are subject to the exception provided in subsection (1)(b) for municipally owned and operated regulated companies.

(c) Regulated companies must be given at least 30 days' notice of any change in the percentage multiplier.

(4) In the event the fee charged in one year is in excess of the amount actually expended in that year, the excess shall be deducted from the amount required to be raised by the fee for the next year before the determination required by subsection (1) is made. Money in the account remaining unspent at the close of a fiscal year shall be used to reduce the percentage calculated in 69-1-224 in the subsequent fiscal year.

History: En. Sec. 9, Ch. 65, L. 1973; amd. Sec. 1, Ch. 319, L. 1974; R.C.M. 1947, 70-709(3), (4); amd. Sec. 2, Ch. 280, L. 1979.

69-1-225. Computation and collection of fee in absence of statement — penalty and interest. (1) If a regulated company or an officer or employee of a regulated company fails, neglects, or refuses to file the statement required by 69-1-223(2), the department of revenue may after the time for filing has expired proceed to inform itself, as best it may, regarding the regulated company's gross operating revenue from all activities regulated by the commission within the state for the calendar quarter, quarters, or portion thereof and may determine and fix the amount of the consumer counsel fee due.

(2) The department may add to the amount of the fee computed under subsection (1), in addition to any other penalty provided by law, a penalty of 10% thereof plus interest at the rate of 1% per month or fraction of month computed on the total amount of fee and penalty. Interest is computed from the date the fee is due to the date of payment.

(3) The department of revenue shall mail to the regulated company a letter setting forth the amount of the fee, penalty, and interest and notifying the company that payment of the full amount of the fee, penalty, and interest must be remitted within 15 days of the regulated company's receipt of the letter; otherwise a lien may be filed.

(4) The 10% penalty may be waived by the department of revenue if reasonable cause for failure and neglect to file the statement is provided to the department.

History: En. Sec. 1, Ch. 195, L. 1979.

Compiler's Comments

Codification. Sec. 4, Ch. 195, L. 1979, provided: "Sections 1 through 3 are intended to be codified as an integral part of Title 69, chapter 1, part 2, and the provisions contained in Title 69, chapter 1, part 2 and Title 69, chapter 2, apply to sections 1 through 3."

69-1-226. Failure to pay fee — penalty and interest — collection of fee. (1) If a regulated company or an officer or employee of a regulated company files the statement required by 69-1-223(2) but fails, neglects, or refuses to pay the fee due within the time required, the department of revenue may after the time for payment has expired add to the fee due, in addition to any other penalty provided by law, a penalty of 10% thereof plus interest at the rate of 1% per month or fraction of month computed on the total amount of the fee and penalty. Interest is computed from the date the fee is due to the date of payment.

(2) The department of revenue shall mail to the regulated company a letter setting forth the amount of the fee, penalty, and interest and notifying the company that payment of the full amount of the fee, penalty, and interest must be remitted within 15 days of the regulated company's receipt of the letter; otherwise a warrant for distraint may be filed.

(3) The 10% penalty may be waived by the department of revenue if reasonable cause for failure and neglect to make payment is provided to the department.

History: **En. Sec. 2, Ch. 195, L. 1979; amd. Sec. 51, Ch. 439, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "otherwise a warrant for distraint may be filed" for "otherwise a lien may be filed" at the end of (2).

69-1-227. Warrant for distraint. If the fee imposed by this part is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any claim, lien, or demand thereafter filed and recorded.

History: **En. Sec. 3, Ch. 195, L. 1979; amd. Sec. 52, Ch. 439, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted the first sentence for a procedure whereby the department has a lien on the real property of the regulated company when the department files a copy of the amount due with the county clerk of court; and deleted a provision at the end of the section providing that the lien may be enforced in the same manner as judgment liens are enforced.

CHAPTER 2

GENERAL REGULATORY PROVISIONS

Part 1 — Role of Public Service Commission

Section

69-2-101. Adoption of rules for rate cases.
69-2-102. Role of commission when consumer counsel protests.

Part 2 — Role of Consumer Counsel

69-2-201. Appearance at hearings by counsel.
69-2-202. Institution of and intervention in proceedings involving regulated companies.
69-2-203. Investigatory powers of counsel.
69-2-204. Representation of consuming public.
69-2-205. Violations.
Sections 69-2-206 through 69-2-210 reserved.
69-2-211. Notice to consumer counsel.
69-2-212. Notice to advise public of availability of consumer counsel.

Part 1

Role of Public Service Commission

69-2-101. Adoption of rules for rate cases. The commission shall adopt such rules of practice and procedure for the filing, investigation, and hearing of petitions or applications to increase or decrease rates and charges of railroads, motor carriers, and public utilities as the commission finds necessary or appropriate to enable it to reach a final decision in an orderly manner.

History: **En. 70-104.1 by Sec. 1, Ch. 137, L. 1977; R.C.M. 1947, 70-104.1.**

69-2-102. Role of commission when consumer counsel protests. In any case involving an application by a regulated entity to the commission for authority to increase its rates which is actively contested by the consumer counsel, the commission shall leave representation of the interests of consumers to the consumer counsel when he timely petitions to become a party to such case. Nothing contained herein prohibits the commission or its staff from investigating and interrogating in any hearing to clarify the case or present an issue. Evidence may be introduced by the commission on an issue that has not been adequately addressed by any party if the commission first requests counsel of record to address such issue and such counsel fails to introduce sufficient or adequate evidence.

History: En. 70-707.1 by Sec. 1, Ch. 474, L. 1977; R.C.M. 1947, 70-707.1.

Part 2

Role of Consumer Counsel

69-2-201. Appearance at hearings by counsel. The consumer counsel may appear at public hearings conducted by the commission, as the representative of the consuming public, on all matters which come before the commission which in any way affect the consuming public and shall have all the rights and powers of any party in interest appearing before the commission regarding examination and cross-examination of witnesses, presentation of evidence, and other matters.

History: En. Sec. 7, Ch. 65, L. 1973; amd. Sec. 2, Ch. 341, L. 1974; amd. Sec. 2, Ch. 138, L. 1975; amd. Sec. 1, Ch. 136, L. 1977; R.C.M. 1947, 70-707(1).

69-2-202. Institution of and intervention in proceedings involving regulated companies. (1) The consumer counsel may institute proceedings before the commission against regulated companies.

(2) The consumer counsel may institute, intervene in, or otherwise participate in appropriate proceedings in the state and federal courts and administrative agencies in the name of and on behalf of the utility and transportation consuming public of the state of Montana or substantial elements thereof, including review of decisions rendered by or failure to act by the commission and applications for restraining orders pending the investigation of and decision upon a matter by the commission, pursuant to 27-19-203.

History: En. Sec. 7, Ch. 65, L. 1973; amd. Sec. 2, Ch. 341, L. 1974; amd. Sec. 2, Ch. 138, L. 1975; amd. Sec. 1, Ch. 136, L. 1977; R.C.M. 1947, 70-707(2), (5); amd. Sec. 4, Ch. 43, L. 1979.

69-2-203. Investigatory powers of counsel. (1) The consumer counsel has all the investigatory powers necessary to perform his duties as provided herein and all discovery powers sanctioned by the Montana Rules of Civil Procedure and the Montana Administrative Procedure Act. It is the specific intent of this section to provide the authority and availability of the process of discovery to the consumer counsel in administrative contested-case procedure. Violations of discovery procedure shall be heard and administered by the district court. In the event of an appeal to district court for enforcement of discovery procedures, the time limits imposed by 69-3-302 and 69-3-303 shall be suspended pending order of the district court.

(2) The consumer counsel may examine in any commission proceedings, under oath, any officer, director, manager, or employee of any regulated company and inspect the business and corporate records of any regulated company in accordance with the law to aid in the exercise of his duties.

History: En. Sec. 7, Ch. 65, L. 1973; amd. Sec. 2, Ch. 341, L. 1974; amd. Sec. 2, Ch. 138, L. 1975; amd. Sec. 1, Ch. 136, L. 1977; R.C.M. 1947, 70-707(3), (4).

69-2-204. Representation of consuming public. (1) The consumer counsel shall meet and confer with members or representatives of the consuming public at such times and places as he determines appropriate.

(2) The consumer counsel has such other powers necessary to fully represent the interests of the consuming public before the commission as may be granted and promulgated by the committee, in accordance with the provisions of the Montana Administrative Procedure Act.

History: En. Sec. 7, Ch. 65, L. 1973; amd. Sec. 2, Ch. 341, L. 1974; amd. Sec. 2, Ch. 138, L. 1975; amd. Sec. 1, Ch. 136, L. 1977; R.C.M. 1947, 70-707(6), (8).

69-2-205. Violations. (1) Any regulated company or any officer or employee of any regulated company who, with intent to evade any fee or any requirement of this part or part 2 of chapter 1 or any lawful requirement of the commission thereunder, fails to pay the fee, to make, render, sign, or verify any statement, or to supply any information, within the time required by or under the provisions of this part or part 2 of chapter 1, or who, with like intent, makes, renders, signs, or verifies any false or fraudulent statement or supplies any false or fraudulent information:

(a) shall be liable to a penalty of not more than $1,000, to be recovered by the attorney general, in the name of the state, by action in any court of competent jurisdiction; and

(b) shall also be guilty of a misdemeanor and shall, upon conviction, be fined not to exceed $1,000 or be imprisoned in the county jail not to exceed 1 year or both, at the discretion of the court.

(2) The certificate of the department of revenue to the effect that a fee has not been paid, that a report has not been filed, or that information has not been supplied, as required by or under the provisions of this part or part 2 of chapter 1, shall be prima facie evidence that such fee has not been paid, that such statement has not been filed, or that such information has not been supplied.

History: En. Sec. 9, Ch. 65, L. 1973; amd. Sec. 1, Ch. 319, L. 1974; R.C.M. 1947, 70-709(5), (6).

69-2-206 through 69-2-210 reserved.

69-2-211. Notice to consumer counsel. In addition to all other forms of notice of hearings conducted by the commission provided for in this title, notices of all hearings shall be served upon the consumer counsel.

History: En. 70-710 by Sec. 1, Ch. 212, L. 1974; R.C.M. 1947, 70-710.

69-2-212. Notice to advise public of availability of consumer counsel. All forms of notice of public hearings conducted by the commission under this title, including all notices posted in public places or published in the legal advertising sections of newspapers, shall advise members of the consuming public of the existence of the office of the consumer counsel and its availability to function on behalf of members of the consuming public.

History: En. 70-711 by Sec. 2, Ch. 212, L. 1974; R.C.M. 1947, 70-711.

CHAPTER 3

REGULATION OF UTILITIES

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Metropolitan sanitary district ratemaking, 7-13-144.

Part 1

Role of Commission

69-3-101.*(Temporary)* **Meaning of term "public utility".** The term "public utility", within the meaning of this chapter, shall embrace every corporation, both public and private, company, individual, association of individuals, their lessees, trustees, or receivers appointed by any court whatsoever, that now or hereafter may own, operate, or control any plant or equipment, any part of a plant or equipment, or any water right within the state for the production, delivery, or furnishing for or to other persons, firms, associations, or corporations, private or municipal:

(1) heat;

(2) street-railway service;

(3) light;

(4) power in any form or by any agency;

(5) except as provided in chapter 7, water for business, manufacturing, household use, or sewerage service, whether within the limits of municipalities, towns, and villages or elsewhere;

(6) telegraph or telephone service.

69-3-101.*(Revived July 1, 1983)* **Meaning of term "public utility".** The term "public utility", within the meaning of this chapter, shall embrace every corporation, both public and private, company, individual, association of individuals, their lessees, trustees, or receivers appointed by any court whatsoever, that now or hereafter may own, operate, or control any plant or equipment, any part of a plant or equipment, or any water right within the state for the production, delivery, or furnishing for or to other persons, firms, associations, or corporations, private or municipal:

(1) heat;

(2) street-railway service;

(3) light;

(4) power in any form or by any agency;

(5) water for business, manufacturing, household use, or sewerage service, whether within the limits of municipalities, towns, and villages or elsewhere;

(6) telegraph or telephone service.

History: En. Sec. 3, Ch. 52, L. 1913; re-en. Sec. 3881, R.C.M. 1921; re-en. Sec. 3881, R.C.M. 1935; R.C.M. 1947, 70-103(part); amd. Sec. 3, Ch. 631, L. 1979; amd. Sec. 8, Ch. 607, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "except as provided in chapter 7" at the beginning of (5).

Effective Date and Termination Date: Section 9, Ch. 607, L. 1981, provided: "This act shall become effective on July 1, 1981. It shall terminate on July 1, 1983."

1979 Effective Date: Section 5, Ch. 631, L. 1979, provided: "This act is effective on passage and approval." Approved May 7, 1979.

69-3-102. Supervision and regulation of public utilities. The commission is hereby invested with full power of supervision, regulation, and control of such public utilities, subject to the provisions of this chapter and to the exclusion of the jurisdiction, regulation, and control of such utilities by any municipality, town, or village.

History: En. Sec. 3, Ch. 52, L. 1913; re-en. Sec. 3881, R.C.M. 1921; re-en. Sec. 3881, R.C.M. 1935; R.C.M. 1947, 70-103(part).

69-3-103. General powers and rulemaking authority of commission. (1) In addition to the modes of procedure hereinafter prescribed in particular cases and classes of cases, said commission shall have power to prescribe rules of procedure and to do all things necessary and convenient in the exercise of the powers conferred by this chapter upon the commission; provided that nothing in this chapter shall be construed as vesting judicial powers on said commission or as denying to any person, firm, association, corporation, municipality, county, town, or village the right to test in a court of competent jurisdiction the legality or reasonableness of any fixed order made by the commission in the exercise of its duties or powers.

(2) The commission shall have the power to:

(a) adopt reasonable and proper rules relative to all inspections, tests, audits, and investigations;

(b) adopt and publish reasonable and proper rules to govern its proceedings; and

(c) regulate the mode and manner of all investigations and hearings of public utilities and other parties before it.

History: (1)En. Sec. 4, Ch. 52, L. 1913; re-en. Sec. 3882, R.C.M. 1921; re-en. Sec. 3882, R.C.M. 1935; Sec. 70-104, R.C.M. 1947; (2)En. Sec. 14, Ch. 52, L. 1913; re-en. Sec. 3894, R.C.M. 1921; re-en. Sec. 3894, R.C.M. 1935; Sec. 70-116, R.C.M. 1947; R.C.M. 1947, 70-104, 70-116(part).

69-3-104. Hearings to be open. All hearings shall be open to the public.

History: En. Sec. 14, Ch. 52, L. 1913; re-en. Sec. 3894, R.C.M. 1921; re-en. Sec. 3894, R.C.M. 1935; R.C.M. 1947, 70-116(part).

69-3-105. Access to commission records and reports. The reports, records, accounts, files, papers, and memoranda of every nature in the possession of the commission are open to the public at reasonable times, subject to the exception that when the commission considers it necessary, in the interest of the public, it may withhold from the public any facts or information in its possession for a period of not more than 90 days after the acquisition of the facts or information.

History: En. Sec. 9, Ch. 52, L. 1913; re-en. Sec. 3889, R.C.M. 1921; re-en. Sec. 3889, R.C.M. 1935; amd. Sec. 29, Ch. 93, L. 1969; amd. Sec. 7, Ch. 315, L. 1974; R.C.M. 1947, 70-111.

69-3-106. Supervision of management of public utilities. (1) The commission shall have authority to inquire into the management of the business of all public utilities, shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from any public utility all necessary information to enable the commission to perform its duties.

(2) The commission, any commissioner, or any person or persons employed by the commission for that purpose shall, upon demand, have the right to inspect the books, accounts, papers, records, and memoranda of any public utility and to examine, under oath, any officer, agent, or employee of such public utility in relation to its business and affairs. Any person, other than one of said commissioners, who shall make such demand shall produce his authority to make such inspection.

(3) The commission may require by order or subpoena, to be served on any public utility in the same manner that a summons is served in a civil action in the district court, the production, within this state and at such time and place as it may designate, of any books, accounts, papers, or records kept by such public utility in any office or place without the state or verified copies in lieu thereof, if the commission shall so order, in order that an examination thereof may be made by the commission or under its direction. Any public utility failing or refusing to comply with any such order or subpoena shall be subject to the liability named in 69-3-206.

History: En. Sec. 15, Ch. 52, L. 1913; re-en. Sec. 3895, R.C.M. 1921; re-en. Sec. 3895, R.C.M. 1935; R.C.M. 1947, 70-117.

69-3-107. Investigation and reports of accidents. (1) The commission, some member thereof, or some person deputed by it shall investigate and make inquiry into every accident occurring in the operation of any public utility in this state resulting in death or injury to any person of such gravity as to require 3 days or more of hospitalization. The report of the accident shall be filed in the office of the commission.

(2) It is hereby made the duty of every public utility operating within this state, promptly upon the occurrence of any accident in the public utility's operation and resulting in death or injury to any person of such gravity as to require hospitalization, to report the accident within the next 2 business days, followed by written report in which shall be stated the time and place of accident, the names of persons killed or injured, and in concise form the nature and cause of such accident. For any other accident occurring in a public utility's operation and resulting in injury, a public utility shall submit a written report to the commission within the 20 days after the occurrence of the accident. The commission shall prescribe forms for the purpose of making such written reports.

History: En. Sec. 27, Ch. 52, L. 1913; re-en. Sec. 3907, R.C.M. 1921; re-en. Sec. 3907, R.C.M. 1935; amd. Sec. 1, Ch. 472, L. 1977; R.C.M. 1947, 70-129.

69-3-108. Standards for and examinations of products and services. (1) The commission shall ascertain and prescribe for each kind of public utility suitable and convenient commercial units of product or service. These shall be lawful units for the purposes of this chapter.

(2) The commission shall ascertain and fix adequate and serviceable standards for the measurement of quality, pressure, initial voltage, or other conditions pertaining to the supply of the product or service rendered by any

public utility and prescribe reasonable regulations for examination and testing of such product or service and for the measurement thereof.

(3) The commission shall provide for the examination and testing of any and all appliances used for the measuring of any product or service of a public utility. Any consumer or user may have any such appliances tested upon payment of the fees fixed by the commission. The commission shall establish and declare reasonable fees to be paid for testing such appliances on the request of the consumers or users, the fee to be paid by the consumer or user at the time of his request. These fees, however, shall be paid by the public utility and repaid to the complaining party if the quality or quantity of the product or the character of the service is found by the commission defective or insufficient in a degree to justify the demand for testing, or the commission may apportion the fees between the parties as justice may require.

(4) The commission may, in its discretion, purchase such materials, apparatus, and standard measuring instruments for such examinations and tests as it may deem necessary.

(5) The commission or its agents, experts, or examiners shall have the power to enter upon any premises occupied by any public utility for the purpose of making the examinations and tests provided in this chapter and to set up and use on such premises any apparatus and appliances and occupy reasonable space therefor. Any public utility refusing to allow such examinations to be made, as herein provided, shall be subject to the penalties prescribed in 69-3-206.

History: En. Sec. 10, Ch. 52, L. 1913; re-en. Sec. 3890, R.C.M. 1921; re-en. Sec. 3890, R.C.M. 1935; R.C.M. 1947, 70-112.

69-3-109. Ascertaining property values. The commission may, in its discretion, investigate and ascertain the value of the property of every public utility actually used and useful for the convenience of the public. The commission is not bound to accept or use any particular value in determining rates; provided, that if any value is used, such value may not exceed the original cost of the property. In making such investigation the commission may avail itself of all information contained in the assessment rolls of various counties, the public records of the various branches of the state government, or any other information obtainable, and the commission may at any time of its own initiative make a revaluation of such property.

History: En. Sec. 6, Ch. 52, L. 1913; re-en. Sec. 3884, R.C.M. 1921; re-en. Sec. 3884, R.C.M. 1935; amd. Sec. 1, Ch. 28, L. 1975; R.C.M. 1947, 70-106.

69-3-110. Enforcement of public utility law. (1) The commission shall inquire into any neglect or violation of the laws of this state by any public utility, as hereinbefore defined, doing business in this state or by the officers, agents, or employees thereof. The commission shall enforce the provisions of this chapter and report all violations thereof to the attorney general.

(2) All rates, fares, charges, classifications, and joint rates fixed by the commission shall be enforced and are prima facie lawful from the date of the order until changed or modified by the commission or in pursuance of part 4. All rules, practices, and services prescribed by the commission shall be enforced and enforcement actions shall be brought pursuant to the provisions

of part 4 until the rules, practices, or services are changed or modified by the commission upon a satisfactory showing being made.

(3) Upon the request of the commission, it is the duty of the attorney general or the prosecuting attorney of any county to aid in any investigation, prosecution, hearing, or trial had under the provisions of this chapter and to institute and prosecute all actions or proceedings necessary for the enforcement of this chapter.

(4) Any forfeiture or penalty herein provided shall be recovered and suit thereon shall be brought in the name of the state in the district court of any county having jurisdiction of the defendant. The attorney general shall be the counsel in any proceeding, investigation, hearing, or trial prosecuted or defended by the commission, as also shall any prosecuting attorney selected by the commission or other special counsel furnished the commission in any county where such action is pending.

(5) In addition to the other remedies provided by this chapter for the prevention and punishment of any violation of the provisions thereof and all orders of the commission, the commission may compel compliance with the provisions of this chapter and of the orders of the commission by proceedings in mandamus, by injunction, or by other civil remedies.

History: En. Secs. 24, 25, 30, 31, Ch. 52, L. 1913; re-en. Secs. 3904, 3905, 3910, 3911, R.C.M. 1921; re-en. Secs. 3904, 3905, 3910, 3911, R.C.M. 1935; R.C.M. 1947, 70-126, 70-127, 70-132, 70-133; amd. Sec. 5, Ch. 43, L. 1979.

Part 2

Requirements for Public Utilities

69-3-201. Utilities to provide adequate service at reasonable charges. Every public utility is required to furnish reasonably adequate service and facilities. The charge made by any public utility for any heat, light, power, water, telegraph, or telephone service produced, transmitted, delivered, or furnished or for any service to be rendered as or in connection with any public utility shall be reasonable and just, and every unjust and unreasonable charge is prohibited and declared unlawful.

History: En. Sec. 5, Ch. 52, L. 1913; re-en. Sec. 3883, R.C.M. 1921; re-en. Sec. 3883, R.C.M. 1935; R.C.M. 1947, 70-105.

69-3-202. Records of public utilities. (1) Every public utility shall keep and render to the commission, in the manner and form prescribed by the commission, uniform accounts of all business transacted.

(2) Every public utility engaged directly or indirectly in any other businesses than those mentioned in 69-3-101 shall, if required by the commission, keep and render separately to the commission, in like manner and form, the accounts of all such other businesses, in which case all the provisions of this chapter shall apply with like force and effect to the books, accounts, papers, and records of such other businesses.

(3) The commission shall cause to be prepared suitable blanks for carrying out the purposes of this chapter and shall, when necessary, furnish such blanks to each public utility. No public utility shall keep any other books, accounts, papers, or records of the business transacted than those prescribed or approved by the commission.

(4) Each public utility shall have an office in one of the towns, villages, or cities in this state in which its property or some part thereof is located and shall keep in said office all such books, accounts, papers, and records as shall be required by the commission to be kept within the state. No books, accounts, papers, or records required by the commission to be kept within the state shall at any time be removed from the state except upon such conditions as may be prescribed by the commission.

(5) Any commissioner or any person or persons authorized by the commission shall have the right to examine the books, accounts, records, and papers of any public utility for the purposes of determining their correctness and whether they are being kept in accordance with the rules and system prescribed by the commission.

History: (1) thru (4)En. Sec. 7, Ch. 52, L. 1913; re-en. Sec. 3885, R.C.M. 1921; re-en. Sec. 3885, R.C.M. 1935; Sec. 70-107, R.C.M. 1947; (5)En. Sec. 7, Ch. 52, L. 1913; re-en. Sec. 3887, R.C.M. 1921; re-en. Sec. 3887, R.C.M. 1935; Sec. 70-109, R.C.M. 1947; R.C.M. 1947, 70-107, 70-109.

69-3-203. Annual report to commission. (1) The accounts of all public utilities shall be closed annually on either June 30 or December 31, a balance sheet taken promptly therefrom, and full annual reports of the business of such utility made to the commission, not later than the first following September 15 if such accounts are closed on June 30 and not later than March 15 of the first following year when such accounts are closed on December 31.

(2) The reports shall be in such form as prescribed by the commission and shall contain all the information deemed by the commission necessary for the proper performance of its duties. The commission may at any time call for desired information omitted from such reports or not provided for therein whenever, in the judgment of the commission, such information is necessary.

History: En. Sec. 7, Ch. 52, L. 1913; amd. Sec. 1, Ch. 186, L. 1919; re-en. Sec. 3886, R.C.M. 1921; amd. Sec. 1, Ch. 172, L. 1929; re-en. Sec. 3886, R.C.M. 1935; amd. Sec. 1, Ch. 160, L. 1945; amd. Sec. 1, Ch. 24, L. 1947; R.C.M. 1947, 70-108.

69-3-204. Fees to be charged by commission. (1) The public service commission shall, except as otherwise provided by law, require and receive fees before filing annual reports, schedules, and supplements of these and shall require and receive fees for copies of orders, documents, classifications, blank forms, and other instruments prepared by it or on file in its office, unless provided by law to be furnished free of charge, under the following schedule:

(a) filing annual reports, each ....$ 5.00;
(b) filing rate schedules, each ....$ 2.00;
(c) classification for public utilities, each ....$ 1.50;
(d) for blank forms of annual reports for utilities .... cost.

(2) The commission shall require and receive an additional sum to be set by the commission to pay the cost of publishing notice as required by this chapter.

(3) This section does not require or authorize the public service commission to collect fees for the filing of annual reports, schedules, and supplements of these which relate solely to interstate commerce.

History: En. Sec. 1, Ch. 100, L. 1935; re-en. Sec. 3847.26, R.C.M. 1935; amd. Sec. 1, Ch. 73, L. 1947; amd. Sec. 1, Ch. 67, L. 1971; amd. Sec. 4, Ch. 315, L. 1974; amd. Sec. 5, Ch. 472, L. 1977; R.C.M. 1947, 8-126(part); amd. Sec. 6, Ch. 43, L. 1979; amd. Sec. 1, Ch. 500, L. 1979.

69-3-205. Verification of reports and other papers. Every annual report, record, or statement required by this chapter to be made to the commission shall be sworn to by the proper officer, agent, or person in charge of such public utility. Any intentionally false oath as to the correctness of such report, record, or statement shall be deemed perjury, and the person making such false oath shall upon conviction be punished as in the case of other perjuries.

History: En. Sec. 29, Ch. 52, L. 1913; re-en. Sec. 3909, R.C.M. 1921; re-en. Sec. 3909, R.C.M. 1935; R.C.M. 1947, 70-131.

69-3-206. Penalty for failure to make reports or permit examinations. (1) Any officer, agent, or person in charge of the books, accounts, records, and papers or any of them of any public utility who shall refuse or fail for a period of 30 days to furnish the commission with any report required by the provisions of this chapter and any officer, agent, or person in charge of any particular books, accounts, records, or papers relating to the business of such public utility who shall refuse to permit any commissioner or other person duly authorized by the commission to inspect such books, accounts, records, or papers on behalf of the commission shall be subject to a fine of not less than $100 or more than $1,000.

(2) Such fine shall be recovered in a civil action upon the complaint of the commission in any court of competent jurisdiction. Each day's refusal or failure on the part of such officer, agent, or person in charge shall be deemed a separate offense and be subject to the penalty herein prescribed.

History: En. Sec. 8, Ch. 52, L. 1913; re-en. Sec. 3888, R.C.M. 1921; re-en. Sec. 3888, R.C.M. 1935; amd. Sec. 1, Ch. 248, L. 1969; R.C.M. 1947, 70-110(part).

69-3-207. Penalty for violation of safety regulations. (1) Every firm, person, corporation, or association violating any safety regulation of the commission shall be subject to a fine of not less than $100 or more than $1,000.

(2) Such fine shall be recovered in a civil action upon the complaint of the commission in any court of competent jurisdiction. Each day in which a violation of a safety regulation persists shall be deemed a separate offense and be subject to the penalty herein prescribed.

History: En. Sec. 8, Ch. 52, L. 1913; re-en. Sec. 3888, R.C.M. 1921; re-en. Sec. 3888, R.C.M. 1935; amd. Sec. 1, Ch. 248, L. 1969; R.C.M. 1947, 70-110(part).

69-3-208. Effect of failure by utility to cooperate with commission. Any officer, agent, or employee of any public utility shall be subject to the penalty prescribed in 69-3-206 whenever the officer, agent, or employee shall:

(1) willfully fail or refuse to fill out and return any blanks as required by this chapter;

(2) willfully fail or refuse to answer any questions therein propounded;

(3) knowingly or willfully give a false answer to any such questions or evade the answer to such questions, where the fact inquired of is within his knowledge; or

(4) upon proper demand, willfully fail or refuse to exhibit to any commission or any commissioners or any person also authorized to examine the

same, any book, paper, or account of such public utility which is in his possession or under his control.

History: En. Sec. 23, Ch. 52, L. 1913; re-en. Sec. 3903, R.C.M. 1921; re-en. Sec. 3903, R.C.M. 1935; R.C.M. 1947, 70-125.

69-3-209. Violations of public utility laws or orders. If any public utility violates any provision of this chapter, does any act herein prohibited, or fails or refuses to perform any duty enjoined upon it, fails to place in operation any rate or joint rate, or fails, neglects, or refuses to obey any lawful requirement or order made by the commission or any court, then for every such violation, failure, or refusal the public utility is subject to the penalty prescribed by 69-3-206.

History: En. Sec. 28, Ch. 52, L. 1913; re-en. Sec. 3908, R.C.M. 1921; re-en. Sec. 3908, R.C.M. 1935; R.C.M. 1947, 70-130; amd. Sec. 7, Ch. 43, L. 1979.

Part 3

Ratemaking Procedures

69-3-301. Schedule of rates, tolls, and charges. (1) Every public utility shall file with the commission, within a time fixed by the commission, schedules which shall be open to public inspection, showing all rates, tolls, and charges which it has established and which are in force at the time for any service performed by it within the state or for any service in connection therewith or performed by any public utility controlled or operated by it. Every public utility shall file with and as a part of such schedule all rules that in any manner affect the rates charged or to be charged for any service. When a schedule of joint rates or charges is or may be in force between two or more public utilities, such schedule shall in like manner be printed and filed with the commission.

(2) A copy of so much of the schedule as the commission considers necessary for the use of the public shall be printed in plain type and kept on file in every station or office of the public utility where payments are made by the consumers or users. Such copy shall be open to the public and in such form and place as to be readily accessible to the public and conveniently inspected.

History: En. Sec. 11, Ch. 52, L. 1913; re-en. Sec. 3891, R.C.M. 1921; re-en. Sec. 3891, R.C.M. 1935; amd. Sec. 1, Ch. 115, L. 1975; amd. Sec. 1, Ch. 435, L. 1977; amd. Sec. 1, Ch. 467, L. 1977; R.C.M. 1947, 70-113(part); amd. Sec. 8, Ch. 43, L. 1979.

69-3-302. Changes in schedules. (1) No change shall be made in any schedule, including schedules of joint rates, except as approved by the commission or upon the passage of 9 months.

(2) Notwithstanding any provision of this title to the contrary and notwithstanding the existence of and authorization for the office of consumer counsel, the rates, tolls, or charges set forth in any schedule filed with the commission pursuant to 69-3-301 shall become effective and be lawful rates, tolls, or charges for the utility service rendered 9 months after the date upon which the schedule was filed under the rules of practice and procedure for filing as adopted by the commission or upon commission approval, whichever shall occur first. However, if the rates, tolls, or charges become effective

because of the passage of 9 months' time, the revenues collected thereunder shall be subject to rebate, plus interest at the rate of 10% per year, to the extent that the rates, tolls, or charges ultimately approved by the commission in its final decision produce revenues which are less than those collected under the filed schedules.

History: En. Sec. 11, Ch. 52, L. 1913; re-en. Sec. 3891, R.C.M. 1921; re-en. Sec. 3891, R.C.M. 1935; amd. Sec. 1, Ch. 115, L. 1975; amd. Sec. 1, Ch. 435, L. 1977; amd. Sec. 1, Ch. 467, L. 1977; R.C.M. 1947, 70-113(part).

69-3-303. Notice and hearing on proposed change. (1) Before it may approve any change increasing the rate or rates for utility service in a schedule generally affecting consumers in a utility's service area or before any change may become effective due to the passage of 9 months, the commission shall publish a notice of the proposed change, conforming to the requirements of 2-4-601 in one or more newspapers published and of general circulation within the area affected by the proposed change. This notice shall announce a hearing on the proposed change and shall inform interested persons how they may petition the commission to become parties to the hearing.

(2) The commission shall proceed to conduct the hearing under the Montana Administrative Procedure Act. The final decision of the commission in any matter decided after a hearing conducted pursuant to this section shall conform to the requirements of a decision in a contested case under the Montana Administrative Procedure Act.

(3) The consumer counsel may in his discretion petition to become a party to the hearing.

History: En. Sec. 11, Ch. 52, L. 1913; re-en. Sec. 3891, R.C.M. 1921; re-en. Sec. 3891, R.C.M. 1935; amd. Sec. 1, Ch. 115, L. 1975; amd. Sec. 1, Ch. 435, L. 1977; amd. Sec. 1, Ch. 467, L. 1977; R.C.M. 1947, 70-113(part).

69-3-304. Temporary approval of rate increases. The commission may, in its discretion, temporarily approve increases pending a hearing or final decision. If the final decision is to disapprove the increase, the commission shall order a rebate to all consumers for the amount collected retroactive to the date of the temporary approval. An order of the commission approving or denying a temporary rate increase shall be an intermediate agency action subject to judicial review under the Montana Administrative Procedure Act.

History: En. Sec. 11, Ch. 52, L. 1913; re-en. Sec. 3891, R.C.M. 1921; re-en. Sec. 3891, R.C.M. 1935; amd. Sec. 1, Ch. 115, L. 1975; amd. Sec. 1, Ch. 435, L. 1977; amd. Sec. 1, Ch. 467, L. 1977; R.C.M. 1947, 70-113(part).

69-3-305. Deviations from scheduled rates, tolls, and charges. (1) It shall be unlawful for any public utility to:

(a) charge, demand, collect, or receive a greater or less compensation for any service performed by it within the state or for any service in connection therewith than is specified in such printed schedules, including schedules of joint rates, as may at the time be in force;

(b) demand, collect, or receive any rate, toll, or charge not specified in such schedules; or

(c) grant any rebate, concession, or special privilege to any consumer or user, which, directly or indirectly, shall or may have the effect of changing the rates, tolls, charges, or payments.

(2) The rates, tolls, and charges named therein shall be the lawful rates, tolls, and charges until the same are changed, as provided in this chapter.

(3) Any violation of the provisions of this section shall subject the violator to the penalty prescribed in 69-3-206. This, however, does not have the effect of suspending, rescinding, invalidating, or in any way affecting existing contracts.

History: **En. Sec. 12, Ch. 52, L. 1913; re-en. Sec. 3892, R.C.M. 1921; re-en. Sec. 3892, R.C.M. 1935; R.C.M. 1947, 70-114.**

69-3-306. Classification of service. The commission may prescribe classifications of the service of all public utilities. Such classifications may take into account the quantity used, the time when used, and any other reasonable consideration. Each public utility is required to conform its schedule of rates, tolls, and charges to such classifications.

History: **En. Sec. 13, Ch. 52, L. 1913; re-en. Sec. 3893, R.C.M. 1921; re-en. Sec. 3893, R.C.M. 1935; R.C.M. 1947, 70-115.**

69-3-307. Treatment of advertisement costs and contributions. Costs or expenses incurred by public utilities for advertising, transfers of funds without full and adequate consideration, contributions, donations, and gifts may not be treated as expenses deductible from income or from capital assets or in any other manner by the public service commission in setting or regulating rates which may be charged by the public utilities pursuant to this chapter. This section shall not apply to advertising which encourages the conservation of energy or product safety or informs the public of the availability of alternative forms of energy or recommends usage at times of lower rates or lower demand. Furthermore, for communications public utilities, the provisions of this section shall not apply to advertising which relates to special equipment that is available to aid the handicapped or to special services that are designed to protect the public health, welfare, and safety or promote more efficient use of a communications system.

History: **En. 70-121.1 by Sec. 1, Ch. 297, L. 1975; R.C.M. 1947, 70-121.1.**

69-3-308 through 69-3-320 reserved.

69-3-321. Complaints against public utility — hearing. (1) The commission shall proceed, with or without notice, to make such investigation as it may deem necessary upon a complaint made against any public utility by any mercantile, agricultural, or manufacturing society or club; by any body politic or municipal organization or association, the same being interested; or by any person, firm, or corporation, provided such person, firm, or corporation is directly affected thereby, that:

(a) any of the rates, tolls, charges, or schedules or any joint rate or rates are in any way unreasonable or unjustly discriminatory;

(b) any regulations, measurements, practices, or acts whatsoever affecting or relating to the production, transmission, delivery, or furnishing of heat, light, water, or power or any service in connection therewith or the conveyance of any telegraph or telephone message or any service in connection therewith is in any respect unreasonable, insufficient, or unjustly discriminatory; or

(c) any service is inadequate.

(2) No order affecting such rates, tolls, charges, schedules, regulations, measurements, practices, or acts complained of shall be entered without a formal hearing, except the commission may issue an order to provide service to a residential consumer pending a hearing on a complaint by such consumer or by the consumer counsel on behalf of such consumer against a public utility, providing that the hearing is held within 20 days unless further delayed by consent of all parties.

History: En. Sec. 17, Ch. 52, L. 1913; re-en. Sec. 3897, R.C.M. 1921; re-en. Sec. 3897, R.C.M. 1935; amd. Sec. 1, Ch. 138, L. 1975; R.C.M. 1947, 70-119(part).

69-3-322. Treatment of multiple complaints. When complaint is made of more than one rate, charge, or practice, the commission may, in its discretion, order separate hearings upon the several matters complained of and at such times and places as it may prescribe.

History: En. Sec. 19, Ch. 52, L. 1913; re-en. Sec. 3899, R.C.M. 1921; re-en. Sec. 3899, R.C.M. 1935; R.C.M. 1947, 70-121(part).

69-3-323. Complaint by public utility. Any public utility may make complaint as to any matter affecting its own product or service with like effect as though made by any mercantile, agricultural, or manufacturing society; body politic or municipal organization; or person. Notice of the hearing upon any such complaint shall be given to the persons interested in such manner as the commission may by rule prescribe.

History: En. Sec. 19, Ch. 52, L. 1913; re-en. Sec. 3899, R.C.M. 1921; re-en. Sec. 3899, R.C.M. 1935; R.C.M. 1947, 70-121(part).

69-3-324. Initiation of action by commission itself. The commission may at any time, upon its own motion, investigate any of the rates, tolls, charges, rules, practices, and services and after a full hearing as provided in this part may make by order such changes as may be just and reasonable, the same as if a formal complaint had been made.

History: En. Sec. 19, Ch. 52, L. 1913; re-en. Sec. 3899, R.C.M. 1921; re-en. Sec. 3899, R.C.M. 1935; R.C.M. 1947, 70-121(part).

69-3-325. Notice of hearing. The commission shall give the public utility and the complainant or complainants at least 10 days' notice of the time when and the place where such hearing will be held.

History: En. Sec. 17, Ch. 52, L. 1913; re-en. Sec. 3897, R.C.M. 1921; re-en. Sec. 3897, R.C.M. 1935; amd. Sec. 1, Ch. 138, L. 1975; R.C.M. 1947, 70-119(part).

69-3-326. Conduct of hearing. At the hearing both the complainant and the public utility shall have the right to appear by counsel or otherwise and be fully heard. Either party shall be entitled to an order by the commission for the appearance of witnesses or the production of books, papers, and documents containing material testimony. Witnesses appearing upon the order of the commission shall be entitled to the same fees and mileage as witnesses in civil cases in the courts of the state, and the same shall be paid out of the state treasury in the same manner as other claims against the state are paid. No fees or mileage shall be allowed unless the chairman of the commission shall certify to the correctness of the claim.

History: En. Sec. 17, Ch. 52, L. 1913; re-en. Sec. 3897, R.C.M. 1921; re-en. Sec. 3897, R.C.M. 1935; amd. Sec. 1, Ch. 138, L. 1975; R.C.M. 1947, 70-119(part).

69-3-327. Subpoena of witnesses. If any party ordered to appear before the commission as a witness shall fail to obey such order, the commission or any member or the secretary thereof may apply to the clerk of the nearest district court for a subpoena commanding the attendance of said witness before the commission. It shall be the duty of such clerk to issue such subpoena and of any peace officer to serve the same. Disobedience to such subpoena shall be deemed a contempt of court and punished accordingly.

History: En. Sec. 18, Ch. 52, L. 1913; re-en. Sec. 3898, R.C.M. 1921; re-en. Sec. 3898, R.C.M. 1935; R.C.M. 1947, 70-120.

69-3-328. Depositions of witnesses. The commission or any party to any proceeding before it may cause the depositions of witnesses to be taken in the manner prescribed by law for like depositions in civil actions.

History: En. Sec. 20, Ch. 52, L. 1913; re-en. Sec. 3900, R.C.M. 1921; re-en. Sec. 3900, R.C.M. 1935; R.C.M. 1947, 70-122.

69-3-329. Immunity for witnesses. (1) No person shall be excused from testifying or from producing books and papers in any proceedings based upon or growing out of any alleged violation of the provisions of this chapter on the ground of or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate or subject him to penalty or forfeiture. Except as provided in subsection (2), no person having so testified shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may have testified or produced any documentary evidence.

(2) No person so testifying shall be exempted from prosecution or punishment for perjury in so testifying.

History: En. Sec. 22, Ch. 52, L. 1913; re-en. Sec. 3902, R.C.M. 1921; re-en. Sec. 3902, R.C.M. 1935; R.C.M. 1947, 70-124.

69-3-330. Decision by commission. (1) If, upon such hearing and due investigation, the rates, tolls, charges, schedules, or joint rates shall be found to be unjust, unreasonable, or unjustly discriminatory or to be preferential or otherwise in violation of the provisions of this chapter, the commission shall have the power to fix and order substituted therefor such rates, tolls, charges, or schedules as shall be just and reasonable.

(2) If it shall in like manner be found that any regulation, measurement, practice, act, or service complained of is unjust, unreasonable, insufficient, preferential, unjustly discriminatory, or otherwise in violation of the provisions of this chapter or if it be found that the service is inadequate or that any reasonable service cannot be obtained, the commission shall have power to substitute therefor such other regulations, measurements, practices, services, or acts and make such order relating thereto as may be just and reasonable.

(3) In any decision ordering a change in the rates which may be charged for electricity or natural gas, the commission shall list each expenditure submitted by the utility for allowance as an operating cost which is disallowed by the commission as an element of operating costs. The list of disallowed

expenditures shall appear in the written decision of the commission and shall itemize each expenditure by amount, category, and purpose.

History: (1), (2)En. Sec. 19, Ch. 52, L. 1913; re-en. Sec. 3899, R.C.M. 1921; re-en. Sec. 3899, R.C.M. 1935; Sec. 70-121, R.C.M. 1947; (3)En. 70-136 by Sec. 1, Ch. 290, L. 1975; Sec. 70-136, R.C.M. 1947; R.C.M. 1947, 70-121(part), 70-136.

Part 4

Review of Commission Actions

69-3-401. Effective date of commission orders. All orders of the commission shall become operative within 20 days after the filing of the order by the commission, subject to the right of stay and injunction as provided in this part.

History: En. Sec. 26, Ch. 52, L. 1913; re-en. Sec. 3906, R.C.M. 1921; re-en. Sec. 3906, R.C.M. 1935; amd. Sec. 1, Ch. 56, L. 1937; amd. Sec. 1, Ch. 475, L. 1977; R.C.M. 1947, 70-128(part).

69-3-402. Action to challenge commission order. (1) Any party in interest being dissatisfied with an order of the commission fixing any rate, fare, charge, classification, or joint rate or any order fixing any regulation, practice, or service may, within 30 days, commence an action in the district court of the proper county against the commission and other interested parties as defendants to vacate and set aside any such order on the ground that the rate, fare, charge, classification, or joint rate fixed in such order is unlawful or unreasonable or that any such regulation, practice, or service fixed in such order is unlawful or unreasonable.

(2) The commission and other parties defendant shall file their answer to said complaint within 20 days after the service thereof, whereupon such action shall be at issue and stand ready for hearing upon 20 days' notice to either party.

(3) All actions brought under this part shall have precedence over any civil cause of a different nature pending in such court, and the court shall always be deemed open for the hearing thereof.

(4) In all actions under this part, the burden of proof shall be upon the party attacking or resisting the order of the commission to show that the order is unlawful or unreasonable, as the case may be.

History: En. Sec. 26, Ch. 52, L. 1913; re-en. Sec. 3906, R.C.M. 1921; re-en. Sec. 3906, R.C.M. 1935; amd. Sec. 1, Ch. 56, L. 1937; amd. Sec. 1, Ch. 475, L. 1977; R.C.M. 1947, 70-128(part); amd. Sec. 1, Ch. 366, L. 1979.

69-3-403. Injunctive relief. (1) Any party in interest, being dissatisfied with the order of the commission fixing any rate, fare, charge, classification, or joint rate or any order fixing or prescribing any rule, practice, or service, may apply to the district court having jurisdiction for an injunction, staying and suspending the operation of the order of the commission pending the final determination of the reasonableness and lawfulness of said order in the courts. Upon proper showing an injunction shall be issued by such court.

(2) As a condition to the granting of such injunction, the court shall require of the party seeking such injunction an undertaking entered into on the part of the plaintiff, supported by responsible corporate surety, in such reasonable sum as the court shall direct, to the effect that the plaintiff will

pay all damages which the opposite party may sustain by reason of the delay or prevention of the order of the commission becoming effective if said order is sustained in the final determination, or in proceedings involving rates, the court may in the alternative require the difference between the existing rate and the commission ordered rate to be impounded under the direction of the court, pending the final determination of the action.

History: En. Sec. 26, Ch. 52, L. 1913; re-en. Sec. 3906, R.C.M. 1921; re-en. Sec. 3906, R.C.M. 1935; amd. Sec. 1, Ch. 56, L. 1937; amd. Sec. 1, Ch. 475, L. 1977; R.C.M. 1947, 70-128(part).

69-3-404. Review confined to record — exceptions. (1) Except as otherwise provided in this section, review shall be conducted by the court without a jury and shall be confined to the record.

(2) In cases of alleged irregularities in procedure before the agency not shown in the record, evidence thereof may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

(3) If, before the date set for hearing, application is made to the court for leave to present additional evidence and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court, before proceeding to render judgment may transmit a copy of such evidence to the commission and, if such transmission is made, shall stay further proceedings in said action for 15 days from the date of such transmission. The court shall, within 7 days after the introduction of such evidence, decide whether or not to transmit a copy of such evidence to the commission. The court is considered to have ruled that the evidence must be transmitted to the commission unless it orders otherwise within such 7-day period. Upon receipt of such evidence, the commission shall consider the same and may modify, amend, or rescind its order relating to such rate, fare, charge, classification, joint rate, regulation, practice, or service complained of in said action and shall report its action thereon to said court within 10 days from the receipt of such evidence.

(4) If the commission shall rescind its order complained of, the action shall be dismissed. If it shall alter, modify, or amend the same, such altered, modified, or amended order shall take the place of the original order complained of and judgment shall be rendered thereon as though made by the commission in the first instance. If the original order shall not be rescinded or changed by the commission, judgment shall be rendered upon such original order.

History: En. Sec. 26, Ch. 52, L. 1913; re-en. Sec. 3906, R.C.M. 1921; re-en. Sec. 3906, R.C.M. 1935; amd. Sec. 1, Ch. 56, L. 1937; amd. Sec. 1, Ch. 475, L. 1977; R.C.M. 1947, 70-128(3), (4); amd. Sec. 2, Ch. 366, L. 1979.

69-3-405. Appeal of court decision. Within 60 days after service of a copy of the order or judgment of the court, either party to said action may appeal or take the case up on error as in other civil actions. Where an appeal is taken to the supreme court of Montana, the cause shall, on the return of the papers to the higher court, be immediately placed on the calendar of the then pending term and shall be assigned and brought to a hearing in the same manner as other causes on the calendar.

History: En. Sec. 26, Ch. 52, L. 1913; re-en. Sec. 3906, R.C.M. 1921; re-en. Sec. 3906, R.C.M. 1935; amd. Sec. 1, Ch. 56, L. 1937; amd. Sec. 1, Ch. 475, L. 1977; R.C.M. 1947, 70-128(5).

Part 5

Issuance of Securities and Creation of Liens

69-3-501. Regulation of issuance of securities and creation of liens by utilities. (1) Whenever a public utility furnishing electric or gas service in the state has revenue derived from sources in Montana which exceeds $5 million or 5% of its gross revenue, the utility's right to issue, assume, or guarantee securities and to create liens on its property in the state is subject to the regulation and supervision of the commission, as set forth in this part.

(2) The public utility, when authorized by order of the commission and not otherwise, may issue stocks and stock certificates and may issue, assume, or guarantee other securities payable at periods of more than 12 months thereafter for the following purposes:

(a) the acquisition of property;

(b) the construction, completion, extension, or improvement of its facilities;

(c) the improvement or maintenance of its service;

(d) the discharge or lawful refunding of its obligations;

(e) the reimbursement of money actually expended for said purposes from income or from other money; or

(f) any other purpose approved by the commission.

History: En. Sec. 1, Ch. 74, L. 1961; R.C.M. 1947, 70-117.1; amd. Sec. 1, Ch. 354, L. 1979.

69-3-502. Petition for issuance of securities. Such public utility shall, by written petition, filed with the commission and setting forth the pertinent facts involved, make application to the commission for an order authorizing the proposed issue, assumption, or guarantee of securities and the application of the proceeds therefrom for the purposes specified.

History: En. Sec. 2, Ch. 74, L. 1961; R.C.M. 1947, 70-117.2(part).

69-3-503. Prompt consideration of petition. All applications to the commission hereunder shall be disposed of promptly and in any event within 30 days after petition is filed with the commission unless, for good cause, it is necessary to continue consideration thereof for a longer period. Whenever such application is continued beyond said 30-day period, the commission shall enter its order effecting such continuance and stating fully therein the facts requiring continuance for a designated period of time.

History: En. Sec. 4, Ch. 74, L. 1961; R.C.M. 1947, 70-117.4.

69-3-504. Decision on petition. After such hearing and upon such notice as the commission may prescribe, the commission shall enter its written order approving the petition and authorizing the proposed securities transactions unless the commission shall find that:

(1) such transactions are inconsistent with the public interest;

(2) the purpose or purposes thereof are not permitted by this part; or

(3) the aggregate amount of the securities outstanding and proposed to be outstanding would exceed the fair value of the properties and business of the public utility.

History: En. Sec. 2, Ch. 74, L. 1961; R.C.M. 1947, 70-117.2(part).

69-3-505. Issuance of certain short-term obligations. Such public utility may issue notes or drafts maturing not more than 1 year after the date of such issue, renewal, or assumption of liability and aggregating, together with all other then outstanding notes and drafts of a maturity of 1 year or less on which such public utility is primarily or secondarily liable, not more than 5% of the par value of the other securities of the public utility then outstanding, without application to or order of the commission. In the case of securities having no par value, the par value for the purpose of this section shall be the fair market value as of the date of issuance of such notes or drafts.

History: **En. Sec. 3, Ch. 74, L. 1961; R.C.M. 1947, 70-117.3.**

69-3-506. Unapproved securities void. Except as provided in 69-3-505, all securities issued, assumed, or guaranteed after July 1, 1961, without approval by the commission as provided herein shall be void.

History: **En. Sec. 5, Ch. 74, L. 1961; R.C.M. 1947, 70-117.5.**

69-3-507. State not obligated on securities. No provision of this part or any act or deed done or performed in connection therewith shall be construed to obligate the state to pay or guarantee in any manner whatsoever any security authorized, issued, assumed, or guaranteed under the provisions of this part.

History: **En. Sec. 6, Ch. 74, L. 1961; R.C.M. 1947, 70-117.6.**

Part 6

Small Power Production Facilities

Part Compiler's Comments

1981 Title: The title to SB 139 (Ch. 436, L. 1981) read: "An act to authorize the sale of electricity from qualifying small power production facilities to utilities under rates and conditions mutually agreed upon or established by the public service commission or to electric cooperatives under terms and conditions mutually agreed upon and in compliance with the Public Utility Regulatory Policies Act."

Interim Study Bill: Chapter 436, L. 1981 (SB 139), was introduced at the request of the Environmental Quality Council, as a result of a study conducted by the EQC and the National Conference of State Legislatures. See 1980 report available from EQC.

69-3-601. Definitions. As used in this part, the following definitions apply:

(1) "Commission" means the Montana public service commission.

(2) "Electric cooperative" means a rural electric cooperative organized under the laws of Montana, or a foreign corporation admitted to do business in Montana.

(3) "Utility" means any public utility supplying electricity and regulated by the commission.

(4) "Qualifying small power production facility" means a facility that:

(a) produces electricity by the use, as a primary energy source, of biomass, waste, water, wind, or other renewable resource, or any combination of those sources;

(b) has a power production capacity that together with any other facilities located at the same site is not greater than 80 megawatts; and

(c) is owned by a person not primarily engaged in the generation or sale of electricity other than electric power from a small power production facility.

History: En. Sec. 1, Ch. 436, L. 1981.

69-3-602. Generation and sale of electricity by qualifying small power production facility. (1) A qualifying small power production facility may generate electricity from the sources described in 69-3-601(4)(a) and may contract for the sale of that electricity with a utility.

(2) A qualifying small power production facility may generate electricity from the sources described in 69-3-601(4)(a) and may contract for the sale of that electricity with an electric cooperative under terms and conditions mutually agreed upon between the parties and in compliance with the rates and regulations established by the Public Utility Regulatory Policies Act.

History: En. Sec. 2, Ch. 436, L. 1981.

69-3-603. Required sale of electricity under rates and conditions prescribed by commission. (1) If a qualifying small power production facility and a utility are unable to mutually agree to a contract for the sale of electricity or a price for the electricity to be purchased by the utility, the commission shall require the utility to purchase the electricity under rates and conditions established under the provisions of subsection (2).

(2) The commission shall determine the rates and conditions of the contract upon petition of a qualifying small power production facility or a utility or during a rate proceeding involving the review of rates paid by a utility for electricity purchased from a qualifying small power production facility. The commission shall render a decision within 120 days of receipt of the petition or before the completion of the rate proceeding. The rates and conditions of the determination shall be made according to the standards prescribed in 69-3-604.

History: En. Sec. 3, Ch. 436, L. 1981.

69-3-604. Standards for determination of rates and conditions. (1) The commission shall determine the rates and conditions of the contract for the sale of electricity by a qualifying small power production facility according to the standards in subsections (2) through (4).

(2) Long-term contracts for the purchase of electricity by the utility from a qualifying small power production facility shall be encouraged in order to enhance the economic feasibility of qualifying small power production facilities.

(3) The rates to be paid by a utility for electricity purchased from a qualifying small power production facility shall be established with consideration of the availability and reliability of the electricity produced.

(4) The commission may set these rates by use of any of the following methods:

(a) the avoided cost over the term of the contract;

(b) the cost of production for the qualifying small power production facility plus a just and reasonable return; or

(c) any other method that will promote the development of qualifying small power production facilities.

History: En. Sec. 4, Ch. 436, L. 1981.

CHAPTER 4

UTILITY LINES AND FACILITIES

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Section
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Part 2 — Construction Standards for Utility Lines and Facilities

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Part 1

General Provisions

69-4-101. Use of public right-of-way for utility lines and facilities. A telegraph, telephone, electric light, or electric power line corporation or public body or any other person owning or operating such is hereby authorized to install its respective plants and appliances necessary for service and to supply and distribute electricity for lighting, heating, power, and other purposes and to that end, to construct such telegraph, telephone, electric light, or electric power lines, from point to point, along and upon any of the public roads, streets, and highways in the state, by the erection of necessary fixtures, including posts, piers, and abutments necessary for the wires. The same shall be so constructed as not to incommode or endanger the public in the use of said roads, streets, or highways, and nothing herein shall be so construed as to restrict the powers of city or town councils.

History: En. Sec. 1000, Civ. C. 1895; amd. Sec. 1, Ch. 55, L. 1905; amd. Sec. 1, Ch. 192, L. 1907; re-en. Sec. 4400, Rev. C. 1907; re-en. Sec. 6645, R.C.M. 1921; re-en. Sec. 6645, R.C.M. 1935; amd. Sec. 1, Ch. 59, L. 1945; R.C.M. 1947, 70-301.

69-4-102. Underground power lines in new service areas. (1) As used in this section:

(a) "new service area" means any subdivision or group of newly constructed or newly installed dwellings (including mobile homes) or commercial buildings which, when occupied, will generate at least five contracts for the supply of electricity; and

(b) "lines used for the distribution of electricity" means all the distribution lines in the new service area through which electricity passes before it is utilized by the consumer and the consumer's dwelling or place of business.

(2) A firm, agency, or person exercising the rights conferred by 69-4-101 shall install underground all lines used for the distribution of electricity in a new service area when technically and economically feasible.

(3) The commission may make rules to implement this section.

History: **En. 70-304 by Sec. 1, Ch. 125, L. 1974; R.C.M. 1947, 70-304.**

Part 2

Construction Standards for Utility Lines and Facilities

69-4-201. Application of national electrical safety code. The national electrical safety code standards shall govern all future construction involving wires for power, heat, light, telephone, telegraph, or signal transmission or reception. Except as provided in 69-4-203, electrical construction of overhead and underground electrical supply and communication lines in the state shall be in conformity with the rules set forth in the national electrical safety code approved by the American national standards institute as published by the institute of electrical and electronic engineers. The national electrical safety code shall furnish construction standards and shall be enforced by the public service commission.

History: **En. Sec. 25, Ch. 171, L. 1917; re-en. Sec. 2701, R.C.M. 1921; re-en. Sec. 2701, R.C.M. 1935; amd. Sec. 12, Ch. 137, L. 1941; R.C.M. 1947, 24-125; amd. Sec. 1, Ch. 516, L. 1979.**

Compiler's Comments

Severability. Sec. 5, Ch. 516, L. 1979, is a severability clause.

69-4-202. Repealed. Sec. 6, Ch. 516, L. 1979.

History: **(1)En. Sec. 1, Ch. 194, L. 1939; amd. Sec. 1, Ch. 139, L. 1951; Sec. 24-142, R.C.M. 1947; (2)En. Sec. 2, Ch. 194, L. 1939; Sec. 24-143, R.C.M. 1947; (3)En. Sec. 3, Ch. 194, L. 1939; Sec. 24-144, R.C.M. 1947; R.C.M. 1947, 24-142, 24-143, 24-144; amd. Sec. 9, Ch. 43, L. 1979.**

69-4-203. Scope of law. Section 69-4-201 shall not apply to:

(1) interstate railroad electrification construction except where the wires of the railroad cross or are crossed by wires belonging to others; and

(2) any electrical construction of any person using the construction for power wires where:

(a) the construction and wires and the power plant furnishing electricity therefor are wholly owned by this person and the electricity conducted thereby is produced and used solely by this person on his own premises and not sold or delivered to any other person off his premises;

(b) the wires or construction are not over or across any highway or public place or the property of others; and

(c) these wires have a potential of less than 450 volts between any phases.

History: **En. Secs. 16, 18, Ch. 137, L. 1941; R.C.M. 1947, 24-140(part), 24-141; amd. Sec. 2, Ch. 516, L. 1979.**

69-4-204. Regulation by local government. All ordinances or parts of ordinances of cities and towns in the state in conflict with the national electrical safety code are repealed. No ordinance in conflict with any provisions of the national electrical safety code may be enacted in any city or town in the state, and any such ordinance is void.

History: En. Sec. 35, Ch. 171, L. 1917; re-en. Sec. 2711, R.C.M. 1921; re-en. Sec. 2711, R.C.M. 1935; R.C.M. 1947, 24-135; amd. Sec. 10, Ch. 43, L. 1979; amd. Sec. 3, Ch. 516, L. 1979.

Compiler's Comments

Composite section. This section was amended by Ch. 43 and Ch. 516, L. 1979, and a composite section was prepared by the Code Commissioner, 1979. Ch. 43 was a Code Commissioner bill and was not intended to make substantive changes in the law. Consequently any conflict of language between Ch. 43 and Ch. 516 has been resolved in favor of the language of Ch. 516.

69-4-205. Violations. Every corporation or joint-stock company or individual which violates 69-4-201 is guilty of a misdemeanor.

History: En. Sec. 33, Ch. 171, L. 1917; re-en. Sec. 2709, R.C.M. 1921; re-en. Sec. 2709, R.C.M. 1935; R.C.M. 1947, 24-133; amd. Sec. 4, Ch. 516, L. 1979.

69-4-206 through 69-4-210 reserved.

69-4-211 through 69-4-241. Repealed. Sec. 6, Ch. 516, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

69-4-211. En. Sec. 1, Ch. 171, L. 1917; re-en. Sec. 2677, R.C.M. 1921; re-en. Sec. 2677, R.C.M. 1935; amd. Sec. 1, Ch. 137, L. 1941; R.C.M. 1947, 24-101.

69-4-212. En. Sec. 2, Ch. 171, L. 1917; re-en. Sec. 2678, R.C.M. 1921; re-en. Sec. 2678, R.C.M. 1935; amd. Sec. 2, Ch. 137, L. 1941; amd. Sec. 1, Ch. 45, L. 1949; R.C.M. 1947, 24-102.

69-4-213. En. Sec. 3, Ch. 171, L. 1917; re-en. Sec. 2679, R.C.M. 1921; re-en. Sec. 2679, R.C.M. 1935; amd. Sec. 3, Ch. 137, L. 1941; R.C.M. 1947, 24-103.

69-4-214. En. Sec. 4, Ch. 171, L. 1917; re-en. Sec. 2680, R.C.M. 1921; re-en. Sec. 2680, R.C.M. 1935; R.C.M. 1947, 24-104.

69-4-215. En. Sec. 5, Ch. 171, L. 1917; re-en. Sec. 2681, R.C.M. 1921; re-en. Sec. 2681, R.C.M. 1935; amd. Sec. 4, Ch. 137, L. 1941; R.C.M. 1947, 24-105.

69-4-216. En. Sec. 6, Ch. 171, L. 1917; re-en. Sec. 2682, R.C.M. 1921; re-en. Sec. 2682, R.C.M. 1935; amd. Sec. 5, Ch. 137, L. 1941; R.C.M. 1947, 24-106.

69-4-217. En. Sec. 7, Ch. 171, L. 1917; re-en. Sec. 2683, R.C.M. 1921; re-en. Sec. 2683, R.C.M. 1935; amd. Sec. 6, Ch. 137, L. 1941; amd. Sec. 1, Ch. 248, L. 1947; amd. Sec. 1, Ch. 344, L. 1971; R.C.M. 1947, 24-107.

69-4-218. En. Sec. 8, Ch. 171, L. 1917; re-en. Sec. 2684, R.C.M. 1921; re-en. Sec. 2684, R.C.M. 1935; R.C.M. 1947, 24-108.

69-4-219. En. Sec. 9, Ch. 171, L. 1917; re-en. Sec. 2685, R.C.M. 1921; re-en. Sec. 2685, R.C.M. 1935; amd. Sec. 7, Ch. 137, L. 1941; R.C.M. 1947, 24-109.

69-4-220. En. Sec. 10, Ch. 171, L. 1917; re-en. Sec. 2686, R.C.M. 1921; re-en. Sec. 2686, R.C.M. 1935; R.C.M. 1947, 24-110.

69-4-221. En. Sec. 11, Ch. 171, L. 1917; re-en. Sec. 2687, R.C.M. 1921; re-en. Sec. 2687, R.C.M. 1935; R.C.M. 1947, 24-111.

69-4-222. En. Sec. 12, Ch. 171, L. 1917; re-en. Sec. 2688, R.C.M. 1921; re-en. Sec. 2688, R.C.M. 1935; amd. Sec. 8, Ch. 137, L. 1941; R.C.M. 1947, 24-112.

69-4-223. En. Sec. 13, Ch. 171, L. 1917; re-en. Sec. 2689, R.C.M. 1921; re-en. Sec. 2689, R.C.M. 1935; R.C.M. 1947, 24-113.

69-4-224. En. Sec. 14, Ch. 171, L. 1917; re-en. Sec. 2690, R.C.M. 1921; re-en. Sec. 2690, R.C.M 1935; amd. Sec. 9, Ch. 137, L. 1941; R.C.M. 1947, 24-114.

69-4-225. En. Sec. 15, Ch. 171, L. 1917; re-en. Sec. 2691, R.C.M. 1921; re-en. Sec. 2691, R.C.M. 1935; amd. Sec. 10, Ch. 137, L. 1941; R.C.M. 1947, 24-115.

69-4-226. En. Sec. 16, Ch. 171, L. 1917; re-en. Sec. 2692, R.C.M. 1921; re-en. Sec. 2692, R.C.M. 1935; amd. Sec. 11, Ch. 137, L. 1941; R.C.M. 1947, 24-116.

69-4-227. En. Sec. 17, Ch. 171, L. 1917; re-en. Sec. 2693, R.C.M. 1921; re-en. Sec. 2693, R.C.M. 1935; R.C.M. 1947, 24-117.

69-4-228. En. Sec. 18, Ch. 171, L. 1917; re-en. Sec. 2694, R.C.M. 1921; re-en. Sec. 2694, R.C.M. 1935; R.C.M. 1947, 24-118.

69-4-229. En. Sec. 19, Ch. 171, L. 1917; re-en. Sec. 2695, R.C.M. 1921; re-en. Sec. 2695, R.C.M. 1935; R.C.M. 1947, 24-119.

69-4-230. En. Sec. 20, Ch. 171, L. 1917; re-en. Sec. 2696, R.C.M. 1921; re-en. Sec. 2696, R.C.M. 1935; R.C.M. 1947, 24-120.

69-4-231. En. Sec. 21, Ch. 171, L. 1917; re-en. Sec. 2697, R.C.M. 1921; re-en. Sec. 2697, R.C.M. 1935; R.C.M. 1947, 24-121.

69-4-232. En. Sec. 22, Ch. 171, L. 1917; re-en. Sec. 2698, R.C.M. 1921; re-en. Sec. 2698, R.C.M. 1935; R.C.M. 1947, 24-122.

69-4-233. En. Sec. 23, Ch. 171, L. 1917; re-en. Sec. 2699, R.C.M. 1921; re-en. Sec. 2699, R.C.M. 1935; R.C.M. 1947, 24-123.

69-4-234. En. Sec. 24, Ch. 171, L. 1917; re-en. Sec. 2700, R.C.M. 1921; re-en. Sec. 2700, R.C.M. 1935; R.C.M. 1947, 24-124.

69-4-235. En. Sec. 26, Ch. 171, L. 1917; re-en. Sec. 2702, R.C.M. 1921; re-en. Sec. 2702, R.C.M. 1935; amd. Sec. 13, Ch. 137, L. 1941; amd. Sec. 2, Ch. 248, L. 1947; amd. Sec. 2, Ch. 45, L. 1949; R.C.M. 1947, 24-126.

69-4-236. En. Sec. 27, Ch. 171, L. 1917; re-en. Sec. 2703, R.C.M. 1921; re-en. Sec. 2703, R.C.M. 1935; R.C.M. 1947, 24-127.

69-4-237. En. Sec. 28, Ch. 171, L. 1917; re-en. Sec. 2704, R.C.M. 1921; re-en. Sec. 2704, R.C.M. 1935; R.C.M. 1947, 24-128.

69-4-238. En. Sec. 29, Ch. 171, L. 1917; re-en. Sec. 2705, R.C.M. 1921; re-en. Sec. 2705, R.C.M. 1935; R.C.M. 1947, 24-129.

69-4-239. En. Sec. 30, Ch. 171, L. 1917; re-en. Sec. 2706, R.C.M. 1921; re-en. Sec. 2706, R.C.M. 1935; R.C.M. 1947, 24-130.

69-4-240. En. Sec. 31, Ch. 171, L. 1917; re-en. Sec. 2707, R.C.M. 1921; re-en. Sec. 2707, R.C.M. 1935; R.C.M. 1947, 24-131.

69-4-241. En. Sec. 32, Ch. 171, L. 1917; re-en. Sec. 2708, R.C.M. 1921; re-en. Sec. 2708, R.C.M. 1935; R.C.M. 1947, 24-132.

Part 3

Underground Conversion of Utilities

69-4-301. Short title. This part shall be known and cited as the "Underground Conversion of Utilities Law".

History: En. Sec. 1, Ch. 429, L. 1971; R.C.M. 1947, 70-601.

69-4-302. Statement of findings and purpose. (1) The legislature finds that in many areas of the state, landowners, cities, towns, counties, rural electric cooperatives, and public utilities desire to convert existing overhead electric and communication facilities to underground locations by means of special improvement district proceedings.

(2) The legislature hereby declares that a public purpose will be served by providing a procedure to accomplish such conversion and that it is in the public interest to provide for such conversion by proceedings taken pursuant to this part, whether such areas be within the limits of a city or town or within a county.

History: En. Sec. 2, Ch. 429, L. 1971; R.C.M. 1947, 70-602.

69-4-303. Definitions. As used in this part, the following words and phrases and any variations thereof shall have the following meaning:

(1) "Communication service" means the transmission of intelligence by electrical means, including but not limited to telephone, telegraph, messenger-call, clock, police, fire alarm, and traffic control circuits or the transmission of standard television or radio signals.

(2) "Convert" or "conversion" means the removal of all or any part of any existing overhead electric or communications facilities and the replacement thereof with underground electric or communication facilities constructed at the same or different locations.

(3) "Electric or communication facilities" means any works or improvements used or useful in providing electric or communication service, including but not limited to poles, supports, tunnels, manholes, vaults, conduits, pipes, wires, conductors, guys, stubs, platforms, crossarms, braces, transformers, insulators, cutouts, switches, capacitors, meters, communication circuits, appliances, attachments, and appurtenances.

(4) "Electrical service" means the distribution of electricity for heat, light, or power.

(5) "Governing body" means the board of county commissioners or city council, as may be appropriate, depending on whether the special improvement district is located in a county or within a city or town.

(6) "Ordinance" means resolution where the governing body acts by resolution and vice versa.

(7) "Overhead electric or communication facilities" means electric or communication facilities located, in whole or in part, above the surface of the ground.

(8) "Public utility" means any public or private person, corporation, or cooperative that provides electric or communication service to the public by means of electric or communication facilities and shall include any special improvement district that provides electric or communication service to the public by means of electric or communication facilities.

(9) "Underground electric or communication facilities" means electric or communication facilities located, in whole or in part, beneath the surface of the ground.

History: En. Sec. 3, Ch. 429, L. 1971; R.C.M. 1947, 70-603(part).

69-4-304. Exclusion for high voltage transmission lines. Electric facilities shall not include any facilities used or intended to be used for the transmission of electric energy at nominal voltages in excess of 25,000 volts.

History: En. Sec. 3, Ch. 429, L. 1971; R.C.M. 1947, 70-603(part).

69-4-305. Effect on authority of public service commission. Nothing contained in this part shall vest any jurisdiction over any public utility in the governing body. The public service commission shall retain all jurisdiction now or hereafter conferred upon it by law.

History: En. Sec. 33, Ch. 429, L. 1971; R.C.M. 1947, 70-633; amd. Sec. 11, Ch. 43, L. 1979.

69-4-306 through 69-4-310 reserved.

69-4-311. Authorization to create special improvement districts. (1) The governing body of every county is hereby authorized and empowered to create special improvement districts under this part within the unincorporated portion of such county. The governing body of every city and town is hereby authorized and empowered to create special improvement districts under this part within its territorial limits. Said special improvement districts shall provide for the conversion of existing overhead electrical and communication facilities to underground locations and the construction, reconstruction, or relocation of any other electric or communication facilities which may be incidental thereto, pursuant to the provisions of this part.

(2) Any such special improvement district shall include an area having a frontage of not less than 1,000 feet upon a public street, road, highway, or utilities easement along which overhead electric or communication facilities are located.

History: En. Sec. 4, Ch. 429, L. 1971; R.C.M. 1947, 70-604.

69-4-312. Procedure to initiate creation of district — resolution for feasibility study. (1) Any governing body, on its own initiative or upon a petition signed by at least 60% of the property owners owning at least 60% of the assessable land of any proposed district requesting the creation of a special improvement district, as provided for in this part, may pass a resolution at any regular or special meeting, declaring that it finds that the special improvement district is in the public interest. The governing body shall make a finding that the formation of the special improvement district, for the purposes set out in this part, will promote the public convenience, necessity, and welfare.

(2) The resolution shall state that the costs and expenses will be levied and assessed upon the property benefited and further request that each public utility serving such area by overhead electric or communication facilities shall, within 120 days after the receipt of the resolution, make a study of the cost of conversion of its facilities in such area to underground service. The report of said study shall be provided to the governing body and made available for inspection in the office of the governing body and each public utility. The resolution of the governing body shall require that each public utility be provided with the name and address of the owner of each parcel or lot within the proposed improvement district, if known, and if not known, the description of the property and such other matters as may be required by the public utilities in order to perform the work involved in the cost study. The resolution shall further state the area in square feet of each lot or parcel within the proposed conversion service area.

History: En. Sec. 6, Ch. 429, L. 1971; R.C.M. 1947, 70-606.

69-4-313. Cost and feasibility report. (1) The public utility report shall set forth an estimate of the total underground conversion costs and shall also indicate the costs of underground conversion of facilities of the public utility located within the boundaries of the various parcels or lots then receiving service. The report shall also contain the public utility's recommendations concerning the feasibility of the project for the district proposed, insofar as the physical characteristics of the district are concerned. The report shall make recommendations by the public utility concerning inclusion or exclusion of areas within the district or immediately adjacent to the district.

(2) The governing body shall give careful consideration to the public utility's recommendations concerning feasibility, recognizing their expertise in this area, and may amend the boundaries of the proposed improvement district; provided, that the costs and feasibility report of the public utility contains a cost figure on the district as amended, or it may request a new cost and feasibility report from the public utility concerned on the basis of the amended district. Should a delay result in a significant increase of the estimated conversion costs, new hearings shall be held on the creation of the district. In the event an increase of 10% or less results from delay, only the hearing on the assessments need be held again.

History: En. Sec. 7, Ch. 429, L. 1971; R.C.M. 1947, 70-607.

69-4-314. Determination of conversion costs. In determining the conversion costs included in the cost and feasibility report required by 69-4-313, the public utility is entitled to amounts sufficient to repay it for the following, as computed and reflected by the uniform system of accounts approved by the Montana public service commission, federal communications commission, or federal power commission or if the public utility is not subject to regulation by any of the above governmental agencies, by the public utility's system of accounts then in use and in accordance with standard accounting procedures of the public utility:

(1) the original costs less depreciation taken of the existing overhead electric and communication facilities to be removed;

(2) the estimated costs of removing the overhead electric and communication facilities less the salvage value of the facilities removed;

(3) if the estimated cost of constructing new underground facilities exceeds the estimated cost of constructing new aerial facilities, then the cost difference between the two;

(4) the cost of obtaining new easements when technical considerations make it reasonably necessary to utilize easements for the underground facilities different from those used for above ground facilities or where the preexisting easements are insufficient for the underground facilities.

History: **En. Sec. 26, Ch. 429, L. 1971; amd. Sec. 8, Ch. 315, L. 1974; R.C.M. 1947, 70-626.**

69-4-315. Resolution of intent to create district. (1) On the filing with the clerk of any governing body of the cost and feasibility report by the public utility, as hereinbefore provided, and after considering the same, the governing body may, at any regular or special meeting, pass a resolution declaring its intention to create a special improvement district.

(2) The resolution shall state:

(a) that the costs and expenses of the district created are, except as otherwise provided for, to be levied and assessed upon the abutting, adjoining, and adjacent lots and land along or upon which improvements are to be made and upon lots and lands benefited by such improvements and included in the special improvement district created;

(b) that it is the intention of the governing body to make such improvement which will promote public convenience, necessity, and welfare; and

(c) the area and boundaries of the proposed improvement district, the character of the proposed improvement, the estimated total cost of the same, and the intention of the governing body to hold a hearing on the proposed improvement.

History: **En. Sec. 8, Ch. 429, L. 1971; R.C.M. 1947, 70-608.**

69-4-316. Notice of resolution of intention and hearing. (1) Following the passage of the resolution in 69-4-315, the governing body shall cause notice of the resolution and a hearing on any protests to the proposed improvement to be given in the manner provided in 69-4-317.

(2) Such notice shall:

(a) declare that the governing body has passed a resolution of intention to create a special improvement district;

(b) describe the boundaries or area of the district with sufficient particularity to permit each owner of real property therein to ascertain that his property lies in the district;

(c) describe in a general way the proposed improvement, specifying the streets or property along which it will be made and the nature of the benefits to the property within the district;

(d) state the estimated cost as determined from the cost and feasibility report and the estimated cost of engineering, clerical service, easements, advertising, inspection, collection of assessments, interest upon bonds, and legal services for preparing proceedings and advising in regard thereto, if applicable;

(e) state that it is proposed to assess the real property in the district to pay all of the cost of the improvement according to the square footage of and the benefits to be derived by each tract, block, lot, and parcel of land within the district;

(f) state the time and place at which the governing body will hear and pass upon all protests that may be made against the making of such improvements or the creation of such district or the benefits to be derived by the real property in the district;

(g) state that all property owners liable to be assessed for such work and desiring to make a protest may submit, in writing, such protest to the governing body by a specified date, not less than 15 days from the first day of publication of such notice.

History: En. Sec. 9, Ch. 429, L. 1971; R.C.M. 1947, 70-609.

69-4-317. Publication and distribution of notice. (1) Notice shall be published in full five times in a daily newspaper or once in a weekly newspaper of general circulation in the county, city, or town in which said district is located. A copy of such notice shall be mailed by the governing body to each owner of land within the proposed district whose property will be assessed for the cost of the improvement. The address to be used for said purpose shall be that last appearing on the real property assessment rolls of the county wherein said property is located.

(2) Mailed notices and the published notice shall state where a copy of the resolution will be available for inspection by any interested parties.

History: En. Sec. 10, Ch. 429, L. 1971; R.C.M. 1947, 70-610.

69-4-318. Right to protest. (1) At any time within the time specified in the notice, any owner of property liable to be assessed for said work may make written protest against the making of such improvements, the creation of such district, or the benefits to be derived by the real property in the district. Protests in writing must be delivered to the clerk of the governing body not later than 5 p.m. of the last day within said period, and said clerk shall endorse thereon the date and hour of its receipt by him.

(2) If the protests against the making of the improvement are received from more than 40% of the property owners owning more than 40% of the property in the proposed special improvement district, the district and project shall be abandoned. The same or any substantially similar special improvement district may not be renewed at any time within 1 year. In determining whether or not sufficient protests have been filed to prevent further proceedings, property owned by a county, city, or town shall be considered to the same effect as other property in the district.

History: (1)En. Sec. 11, Ch. 429, L. 1971; Sec. 70-611, R.C.M. 1947; (2)En. Sec. 12, Ch. 429, L. 1971; Sec. 70-612, R.C.M. 1947; R.C.M. 1947, 70-611, 70-612(part).

69-4-319. Hearing on creation of district. (1) At the time and place specified in the notice, the governing body shall meet and shall proceed to hear and pass upon all protests. Such hearing may be adjourned from time to time to a fixed future time and place. If at any time during the hearings it shall appear to the governing body that changes in the proposed improvements or the proposed district should be made which, after consultation with the public utility concerned, appear to affect either the cost or feasibility of the improvement, the hearing shall be adjourned to a fixed future time and place and a new cost and feasibility report prepared on the basis of the contemplated changes. If additional areas are added, notice and an opportunity to protest shall again be given on the basis of such changes.

(2) The governing body shall, after considering matters brought forth at the hearing, either abandon the district and project or adopt an ordinance establishing the district and authorizing the project.

History: **En. Sec. 12, Ch. 429, L. 1971; R.C.M. 1947, 70-612(part).**

69-4-320. Ordinance creating district. (1) The ordinance authorized by 69-4-319 shall be published in the manner provided in 69-4-317, but need not be mailed.

(2) If an ordinance is adopted establishing the district, such ordinance shall finally and conclusively establish the regular organization of the district against all persons, unless an action attacking the validity of the organization shall be commenced in a court of competent jurisdiction within 30 days after the adoption of such ordinance. Such action shall be subject to the provisions of 69-4-321. Thereafter, any such action shall be perpetually barred, and the organization of said district shall not be directly or collaterally questioned in any suit, action, or proceedings.

History: **En. Sec. 12, Ch. 429, L. 1971; R.C.M. 1947, 70-612(part).**

69-4-321. Waiver of objections. Every person who has real property within the boundaries of the district and who fails to submit a written protest in accordance with 69-4-318 or appear and give testimony at the public hearing shall be deemed to have waived any objections to the creation of the district, the making of the improvements, and the inclusion of his property within the district. Such waiver shall not, however, preclude his right to object to the amount of the assessment at the hearing for which provision is made in 69-4-326.

History: **En. Sec. 13, Ch. 429, L. 1971; R.C.M. 1947, 70-613.**

69-4-322. Proposed assessment list. Following creation of the special improvement district, the governing body shall cause to be prepared an assessment list detailing the total amount to be assessed, the specific properties assessed, and the amount of assessment on each piece of property.

History: **En. Sec. 14, Ch. 429, L. 1971; R.C.M. 1947, 70-614.**

69-4-323. Basis of assessments. (1) Whenever any improvement authorized to be made by any governing body by the terms of this part is ordered, the governing body shall provide for the apportionment of the cost and expenses thereof as in their judgment may be fair and equitable in consideration of the benefits accruing to the abutting, adjoining, contiguous, and adjacent lots and land and to the lots and land otherwise benefited and included within the special improvement district formed. Each lot and parcel of the land shall be separately assessed for the cost and expenses thereof in proportion to the number of square feet of such land and lots abutting, adjoining, contiguous, and adjacent thereto or included in the special improvement district and in proportion to the benefits derived to such property by said improvements.

(2) The entire cost of the improvement may be assessed against the benefited property, as herein provided, or if money for paying part of such cost is available from any other source, the money so available may be so applied and the remaining cost so assessed against the benefited property. The cost and expenses to be assessed, as herein provided for, shall include the cost of the improvement, engineering and clerical service, advertising, cost of inspection, cost of collecting assessments, cost of easements, and interest upon bonds, if issued, and for legal services for preparing proceedings and advising in regard thereto.

(3) Fee lands and property of the state or federal government shall not be considered as lands or property benefited by any improvement district and shall not be subject to assessment for the payment of any of the cost or expense of such improvement.

History: En. Sec. 5, Ch. 429, L. 1971; R.C.M. 1947, 70-605.

69-4-324. Proposed assessment ordinance. After the preparation of the proposed assessment list, the governing body shall cause to be prepared, for adoption at the hearing hereinafter provided for, an ordinance declaring the entire cost of the improvement, including the cost of construction as determined from 69-4-314, all legal and fiscal fees and costs, the cost of the publication of notices, and all other costs properly incident to the construction of the improvement and the financing thereof. Such ordinance shall specify what share, if any, of the total cost is payable from sources other than the imposition of assessments and shall incorporate the proposed assessment list provided for in 69-4-322. Such ordinance shall specify the terms of installment payments, if said improvement is to be financed over a period of time.

History: En. Sec. 15, Ch. 429, L. 1971; R.C.M. 1947, 70-615.

69-4-325. Notice of hearing on proposed assessments. (1) After the preparation of the ordinance provided for in 69-4-324, notice of a public hearing on the proposed assessments shall be given.

(2) Such notice shall be published one time in a newspaper in which the first notice of hearing was published at least 20 days before the date fixed for the hearing and shall be mailed by the governing body not less than 15 days prior to the date fixed for such hearing to each owner of real property whose property will be assessed for part of the cost of the improvement at the addresses appearing on the last completed real property assessment rolls of the county wherein said affected property is located.

(3) (a) Each notice shall state that at the specified time and place, the governing body will hold a public hearing upon the proposed assessments and shall state that any owner of any property to be assessed pursuant to the ordinance will be heard on the question of whether his property will be benefited by the proposed improvement to the amount of the proposed assessment against his property and whether the amount assessed against his property constitutes more than his proper proportional share of the total cost of the improvement.

(b) The notice shall further state where a copy of the ordinance proposed to be adopted levying the assessments against all real property in the district will be on file for public inspection and that, subject to such changes and corrections therein as may be made by the governing body, it is proposed to adopt the ordinance at the conclusion of the hearing.

(c) The published notice shall describe the boundaries or area of the district with sufficient particularity to permit each owner of real property therein to ascertain that his property lies in the district. The mailed notice may refer to the district by name and date of creation and shall state the amount of the assessment proposed to be levied against the real property of the person to whom the notice is mailed and the terms of installment financing, if any. In the absence of fraud, the failure to mail any notice does not invalidate any assessment or any proceeding under this part.

History: En. Sec. 16, Ch. 429, L. 1971; R.C.M. 1947, 70-616.

69-4-326. Hearing on proposed assessment ordinance — adjustment of assessments. (1) On the date and at the time and place specified in the aforementioned notice, the governing body shall, in open and public session, hear all arguments relating to the benefits accruing to any tract, block, lot, or parcel of land therein and the amounts proposed to be assessed against any such tract, block, lot, or parcel. The hearing may be adjourned from time to time to a fixed future time and place.

(2) After the hearing has been concluded and all persons desiring to be heard have been heard, the governing body shall consider the arguments presented and shall make such corrections in the assessment list as may be considered just and equitable. Such corrections may eliminate, increase, or decrease the amount of the assessment proposed to be levied against any piece of property. However, no increase of any proposed assessment shall be valid unless the owner of the property is given notice and an opportunity to be heard. After such corrections have been made, the governing body shall make a specific finding that no proposed assessment on the corrected assessment list exceeds the benefit to be derived from the improvement by the piece of property to be so assessed and that no piece of property so listed will bear more than its proper proportionate share of the cost of such improvement.

History: En. Sec. 17, Ch. 429, L. 1971; R.C.M. 1947, 70-617.

69-4-327. Adoption of assessment ordinance. After the public hearing has been concluded and all corrections made to the assessment list, the governing body shall proceed to adopt the assessment ordinance. The adoption of such ordinance shall be prima facie evidence of the fact that the property assessed is benefited in the amount of the assessments and that such assessments have been lawfully levied.

History: En. Sec. 18, Ch. 429, L. 1971; R.C.M. 1947, 70-618.

69-4-328. Payment of assessment. (1) All assessments shall be due and payable within 30 days after the final publication of the assessing ordinance, without demand; provided, that all such assessments may be paid, at the election of the owner, in installments, with interest, as provided in subsection (2).

(2) Failure to pay the whole assessment within said period of 30 days shall be conclusively considered and held to be an election on the part of all

persons interested, whether under disability or otherwise, to pay in installments. In case of such election, the assessment shall be payable at such times as is provided by the governing body, not to exceed 20 years, and shall bear interest in all cases on the unpaid principal at the rate not exceeding 8% per annum. The number of installments, the time of payments, and the rate of interest shall be determined by the governing body and set forth in the assessing ordinance.

History: (1)En. Sec. 19, Ch. 429, L. 1971; Sec. 70-619, R.C.M. 1947; (2)En. Sec. 20, Ch. 429, L. 1971; Sec. 70-620, R.C.M. 1947; R.C.M. 1947, 70-619, 70-620.

69-4-329. Advance payment of assessment installments. (1) The governing body may, in the ordinance levying the assessments, provide that all unpaid installments of assessments levied against any piece of property may (but only in their entirety) be paid prior to the dates on which they become due, if the property owner paying such installments pays all interest which would accrue thereon to the next succeeding date on which interest is payable on the bonds issued in anticipation of the collection of the assessments. In addition, the property owner must pay such additional amount of interest as in the opinion of the governing body is necessary to assure the availability of money fully sufficient to pay interest on the bonds, as interest becomes due, and any redemption premiums which may become payable on the bonds in order to retire, in advance of maturity, bonds in a sufficient amount to utilize the assessments thus paid in advance.

(2) If no bonds have been issued, then all unpaid installments of assessments levied against any piece of property may be paid in their entirety prior to the date upon which they become due by paying the principal amount due and the interest accrued thereon to the date of payment.

History: En. Sec. 23, Ch. 429, L. 1971; R.C.M. 1947, 70-623.

69-4-330. Collection of installments — delinquency. Installments shall be collected in the manner and at the time prescribed. When one payment becomes delinquent, all payments shall, at the option of the governing body by appropriate and duly adopted resolutions, become delinquent. Delinquent installments shall be subject to the same interest and penalties as are now or hereafter provided for delinquent taxes by the laws of the state, and property subject to delinquent installments shall be sold as other property is sold for taxes.

History: En. Sec. 21, Ch. 429, L. 1971; R.C.M. 1947, 70-621.

69-4-331. Assessment lien. All assessments made in pursuance of this part, together with all interest thereon and penalties for default in payment thereof and all costs in collecting the same, shall constitute, from the date of the final publication of the assessing ordinance, a lien in the several amounts assessed against each lot or tract of land and shall have priority over all other liens excepting general tax liens. No sale of property for the nonpayment of taxes or other special assessments shall extinguish the lien of other than the taxes or special assessments for the nonpayment of which such sale is had.

History: En. Sec. 22, Ch. 429, L. 1971; R.C.M. 1947, 70-622.

69-4-332. *(Temporary)* **Issuance of bonds.** (1) After the expiration of 30 days from the date of the adoption of the ordinance levying the assessments, the governing body may issue negotiable, interest-bearing bonds in a principal amount not exceeding the unpaid balance of the assessments levied. Whenever any ordinance authorizing the issuance of any bonds pursuant to the improvement contemplated shall have been adopted, such ordinance shall be published once in a newspaper in which the original notice of hearing was published.

(2) The bonds shall bear interest at a rate not exceeding the limitations of 17-5-102, payable as specified by the governing body over a period not exceeding 20 years. The bonds shall be of such form and denomination and shall be payable in principal and interest at such times and place and shall be sold, authorized, and issued in such manner as the governing body may determine. The bonds shall be dated no earlier than the date on which the special assessment shall begin to bear interest and shall be secured by and payable from the levy and collection of the special assessments in anticipation of the collection of which they are issued. Any premium received on the sale of the bonds may be applied as other bond proceeds, or if not so applied, the same shall be placed in the fund for the payment of principal of and interest on the bonds.

(3) The bonds shall be signed by a member of the governing body designated by the governing body and shall be countersigned by the appropriate treasurer, with the corporate seal thereto affixed as appropriate, and attested to by the clerk of the governing body. Interest may be evidenced by interest coupons attached to such bonds and signed by a facsimile signature of one of the individuals who signed the bond.

69-4-332. *(Revived July 1, 1983)* **Issuance of bonds.** (1) After the expiration of 30 days from the date of the adoption of the ordinance levying the assessments, the governing body may issue negotiable, interest-bearing bonds in a principal amount not exceeding the unpaid balance of the assessments levied. Whenever any ordinance authorizing the issuance of any bonds pursuant to the improvement contemplated shall have been adopted, such ordinance shall be published once in a newspaper in which the original notice of hearing was published.

(2) The bonds shall bear interest at not exceeding 8% per annum, payable as specified by the governing body over a period not exceeding 20 years. The bonds shall be of such form and denomination and shall be payable in principal and interest at such times and place and shall be sold, authorized, and issued in such manner as the governing body may determine. The bonds shall be dated no earlier than the date on which the special assessment shall begin to bear interest and shall be secured by and payable from the levy and collection of the special assessments in anticipation of the collection of which they are issued. Any premium received on the sale of the bonds may be applied as other bond proceeds, or if not so applied, the same shall be placed in the fund for the payment of principal of and interest on the bonds.

(3) The bonds shall be signed by a member of the governing body designated by the governing body and shall be countersigned by the appropriate treasurer, with the corporate seal thereto affixed as appropriate, and attested to by the clerk of the governing body. Interest may be evidenced by interest

coupons attached to such bonds and signed by a facsimile signature of one of the individuals who signed the bond.

History: En. Secs. 24, 25, Ch. 429, L. 1971; R.C.M. 1947, 70-624, 70-625(part); amd. Sec. 16, Ch. 500, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "at a rate not exceeding the limitations of 17-5-102" for "at not exceeding 8% per annum" near the beginning of (2).

Effective Date — Termination: Section 21, Ch. 500, L. 1981, provided: "This act is effective on passage and approval and terminates on July 1, 1983." Approved April 23, 1981.

69-4-333. Challenge to validity of assessments and bonds. (1) No special assessment levied under this part shall be declared void, nor shall any such assessment or part thereof be set aside in consequence of any error or irregularity permitted or appearing in any of the proceedings under this part, but any party feeling aggrieved by any such special assessment or proceeding may bring a civil action to cause such grievance to be adjudicated if such action is commenced prior to the expiration of the period specified in this section. The burden of proof to show that such special assessment or part thereof is invalid, inequitable, or unjust shall rest upon the party who brings such suit. Every person whose property is subject to such special assessment and who fails to appear during the public hearings on said assessments to raise his objection to such tax shall be deemed to have waived all objections to such levy, except the objection that the governing body lacks jurisdiction to levy such tax.

(2) For a period of 30 days after the governing body has adopted the assessment ordinance, any taxpayer in the district shall have the right to institute litigation for the purpose of questioning or attacking the proceedings pursuant to which the assessments have been authorized.

(3) For a period of 30 days after publication of the bond ordinance, as provided for in 69-4-332(1), any person whose property shall have been assessed and any taxpayer in the district shall have the right to institute litigation for the purpose of questioning or attacking the legality of such bonds.

(4) After the expiration of such 30-day period, all proceedings theretofore had by the governing body, the bonds to be issued pursuant thereto, and the special assessments from which such bonds are to be paid shall become incontestable, no suit attacking or questioning the legality thereof may be instituted in this state, and no court shall have the authority to inquire into such matters.

History: En. Sec. 25, Ch. 429, L. 1971; R.C.M. 1947, 70-625(part).

69-4-334 through 69-4-350 reserved.

69-4-351. Maintenance and construction of converted facilities. The public utility shall have the duty to maintain, repair, and replace all underground facilities installed pursuant to this part. There shall be no competitive bidding as to the construction of the converted facilities since existing facilities are owned, maintained, and operated by the public utility and the continuity of service of the utility is essential, both of which make construction work by third persons impracticable. Therefore, the public utility concerned shall be responsible for the accomplishment of all construction work and may contract out such of the construction work as it deems desirable.

History: En. Sec. 27, Ch. 429, L. 1971; R.C.M. 1947, 70-627(part).

69-4-352. Title to converted facilities. Title to the converted facilities shall be at all times solely and exclusively in the public utility involved, as the public is only purchasing the intangible benefits which come from converted facilities; that is, the removal of the overhead facilities and replacement by underground facilities.

History: En. Sec. 27, Ch. 429, L. 1971; R.C.M. 1947, 70-627(part).

69-4-353. Conversion of facilities on public property — notice to landowners. (1) Upon completion of the conversion of the overhead electric or communication facilities on public lands and right-of-way to underground, the public utility shall file a verified statement of the costs of such conversion with the governing body.

(2) The governing body shall mail to each landowner a notice stating that:

(a) service from the underground facilities is available;

(b) the landowner has 60 days after the date of the mailing of such notice to convert all overhead electric or communication facilities providing service to any structure or improvement located on his lot or parcel to underground service facilities; and

(c) after the 60-day period following the date of the mailing of the notice, the governing body will order the public utility to disconnect and remove all overhead electric and communication facilities providing service to any structure or improvement within the area.

History: En. Sec. 28, Ch. 429, L. 1971; R.C.M. 1947, 70-628.

69-4-354. Conversion of facilities on private property. (1) Any conversion of electric or communication service facilities, including service connections, located on a privately owned lot or parcel shall be made, at the expense of the landowner, by the public utility owning the facility. The conversion shall be made in accordance with applicable safety rules, codes, regulations, tariffs, or ordinances. The public utility shall not be required to convert service lines on property, other than public lands and right-of-way, until the landowner furnishes to the public utility a permit or easement authorizing the public utility and its employees, agents, and contractors to enter upon real property of the landowner for the purpose of performing conversion work thereon.

(2) Upon completion of the conversion of overhead electric or communication service facilities on privately owned lots and parcels within a district, the public utility shall file with the governing body a verified statement of the costs of the conversion of such service facilities of each landowner in the district. Promptly thereafter, the governing body shall mail to each landowner a copy of such verified statement, which shall be due and payable within 30 days or as otherwise provided by the public utility.

History: En. Sec. 29, Ch. 429, L. 1971; R.C.M. 1947, 70-629.

69-4-355. Procedure upon failure to effect conversion on private property. If the owner of any structure or improvement served from the overhead electric or communication service facilities within an underground assessment district does not grant the utility a permit or easement referred to in 69-4-354 or if such an owner fails to convert to underground service facilities within 60 days after the mailing to him of the notice provided by 69-4-353, the governing body shall order the public utility to complete the conversion and to disconnect and remove all overhead facilities, including service facilities, providing service to such structure or improvement.

History: **En. Sec. 30, Ch. 429, L. 1971; R.C.M. 1947, 70-630.**

69-4-356. Payment of public utility. (1) Upon completion of the conversion contemplated by this part, the public utility shall present the governing body with its verified bill for conversion costs as computed pursuant to 69-4-314, but based upon the actual cost of constructing the underground facility rather than the estimated cost of the facility. In the event the conversion costs are less than the estimated conversion costs, each assessed owner within the improvement district shall receive the benefit, prorated in such form and at such time or times as the governing body may determine. The bill of the public utility shall be paid within 30 days by the governing body from the improvement district funds or such other source as is properly designated by the governing body.

(2) In determining the actual cost of constructing the underground facility, the public utility shall use its standard accounting procedures, such as the uniform system of accounts as defined by the federal communications commission, federal power commission, or Montana public service commission and as is in use at the time of the conversion by the public utility involved.

History: **En. Sec. 31, Ch. 429, L. 1971; R.C.M. 1947, 70-631.**

69-4-357. Prohibition on reinstallation of overhead facilities. Once removed, no overhead electric or communication facilities shall be installed in a special improvement district for conversion of overhead electric and communication facilities, except as authorized by this part.

History: **En. Sec. 32, Ch. 429, L. 1971; R.C.M. 1947, 70-632.**

69-4-358. Postponement of conversion until certain actions occur. If a special improvement district is established pursuant to this part, the public utility involved shall not be required to commence conversion until the ordinance, the assessment roll, and the issuance of bonds have become final and until no civil action has been filed or if civil action has been filed, until the decision of the court upon the action has become final and is not subject to further appeal.

History: **En. Sec. 35, Ch. 429, L. 1971; R.C.M. 1947, 70-635.**

Part 4

Relocation of Overhead Utility Lines

69-4-401. Definitions. As used in this part, the following definitions apply:

(1) "Agricultural improvement" includes, without limitation, sprinkler irrigation systems.

(2) "Overhead utility line" means a facility for the transmission or distribution of electricity or telephone messages along wires or cables suspended above the ground between single or double poles and their respective anchors.

History: **En. 24-201 by Sec. 1, Ch. 123, L. 1975; R.C.M. 1947, 24-201.**

69-4-402. Petition for relocation of overhead line. An owner of agricultural land across which an overhead utility line has been constructed may petition the district court for an order for relocation of the line for the purpose of installing an agricultural improvement. The petition shall set forth the nature of the proposed agricultural improvement, the increase in productivity of the land anticipated to result from the improvement, and a feasible alternative route, across other land to be provided by the petitioner at no cost to the owner of the overhead utility line.

History: **En. 24-202 by Sec. 2, Ch. 123, L. 1975; R.C.M. 1947, 24-202.**

69-4-403. Hearing and order. The district court shall, upon notice to the owner of the overhead utility line, hear evidence bearing upon the matters presented in the petition. If the evidence establishes a substantial improvement in agricultural productivity and the feasibility of the relocated route, the court shall grant or modify and grant, as modified, the petition and order the owner of the line to relocate the line.

History: **En. 24-203 by Sec. 3, Ch. 123, L. 1975; R.C.M. 1947, 24-203.**

69-4-404. Costs of relocation. The costs of relocating an overhead utility line as ordered under 69-4-403 shall be paid 50% by the utility and 50% by the owner of the land. However, if the person petitioning for the order fails for any reason to install the agricultural improvement within 2 years following the date relocation is completed, he must reimburse the owner of the line the full cost of relocation, and the court has continuing jurisdiction over the parties for the purpose of ordering such reimbursement.

History: **En. 24-204 by Sec. 4, Ch. 123, L. 1975; R.C.M. 1947, 24-204.**

Part 5

Excavations Near Underground Facilities

69-4-501. Definitions. The following definitions shall apply to this part:

(1) "Excavation" shall mean and include any ditch, trench, cut, hole, or change in grade.

(2) "Person" shall mean and include an individual, partnership, joint venture, or corporation and includes the employer of an individual.

(3) "Underground facility" shall mean any item of personal property which shall be buried or placed below ground for use in connection with the storage or conveyance of water, sewage, electronic, telephonic or telegraphic communications, electric energy, oil, gas, or other substances and shall include but not be limited to pipes, sewers, conduits, cables, valves, lines, wires, manholes, and attachments to the aforesaid.

History: **En. Sec. 1, Ch. 180, L. 1971; R.C.M. 1947, 32-4801.**

69-4-502. Information to be sought before excavation. (1) No person shall make or begin any excavation in any public street, alley, right-of-way dedicated to the public use, or utility easement without first obtaining information concerning the possible location of any underground facility from each and every public utility, municipal corporation, or other person having the right to bury such underground facilities within the public street, alley, right-of-way, or utility easement.

(2) Every public utility, municipal corporation, or other person having the right to bury underground facilities shall file with the county clerk and recorder in each county where the underground facilities are located, the name, address, and telephone number of the person or persons from whom the necessary information may be obtained.

History: (1)En. Sec. 2, Ch. 180, L. 1971; Sec. 32-4802, R.C.M. 1947; (2)En. Sec. 3, Ch. 180, L. 1971; Sec. 32-4803, R.C.M. 1947; R.C.M. 1947, 32-4802, 32-4803(part).

69-4-503. Procedure to secure information. (1) Any person seeking information concerning the location of any underground facility must do so by request in writing.

(2) The person from whom such information is sought must acknowledge in writing receipt of such request and must provide such information in writing no later than the end of the normal business hours of the second full business day following the date of receipt of the request, Saturdays, Sundays, and holidays excluded.

History: En. Sec. 3, Ch. 180, L. 1971; R.C.M. 1947, 32-4803(part).

69-4-504. Information to be part of architects' and engineers' plans. (1) Architects and engineers designing or requiring excavating in or adjacent to any public street, alley, or right-of-way dedicated to public use or utility easement shall obtain information as to underground facilities and then make said information a part of the plan by which the contractors operate.

(2) Nothing in this section shall excuse any person from the obligation imposed by 69-4-502(1).

History: En. Sec. 8, Ch. 180, L. 1971; R.C.M. 1947, 32-4808.

69-4-505. Liability for damages to underground facilities. (1) If any underground facility is damaged by any person who has failed to obtain information as to its location as provided in 69-4-503, then such person shall be liable to the owner of the underground facility for the entire cost of the repair of such facility.

(2) If information requested pursuant to 69-4-503 is not provided within the time specified therein, any person damaging or injuring underground facilities shall not be liable for such damage or injury, unless caused by his negligence.

(3) The act of obtaining information as required by this part shall not excuse any person making any excavation from doing so in a careful and prudent manner, nor shall it excuse such person from liability for any damage or injury resulting from his negligence.

History: (1)En. Sec. 4, Ch. 180, L. 1971; Sec. 32-4804, R.C.M. 1947; (2)En. Sec. 5, Ch. 180, L. 1971; Sec. 32-4805, R.C.M. 1947; (3)En. Sec. 6, Ch. 180, L. 1971; Sec. 32-4806, R.C.M. 1947; R.C.M. 1947, 32-4804, 32-4805, 32-4806.

69-4-506. Exemption for emergency repairs. The provisions of this part shall not apply to any person making repairs to an underground facility or repairs to the streets or alleys themselves in a situation of emergency when such repairs must be made within a shorter period of time than that provided for in 69-4-503; provided, however, that this exemption from obtaining information shall not excuse the person making the repairs from any liability for damages caused by his negligence.

History: **En. Sec. 7, Ch. 180, L. 1971; R.C.M. 1947, 32-4807.**

Part 6

Movement of Structures

69-4-601. Movement of structures and interference with wires — notice required. No person, firm, or corporation moving, hauling, or transporting any house, building, derrick, or other structure shall cut, move, raise, or in any manner interfere with an electric light or electric power wire or poles or with telephone or telegraph wires, cables, messenger wires, guy wires, or poles without giving notice to the owner or agent of said wires or poles, as hereinafter provided.

History: **En. Sec. 1, Ch. 55, L. 1929; re-en. Sec. 2711.1, R.C.M. 1935; amd. Sec. 1, Ch. 174, L. 1937; amd. Sec. 14, Ch. 137, L. 1941; R.C.M. 1947, 24-136.**

69-4-602. Procedure to give required notice. The person, firm, or corporation moving any house, building, derrick, or other structure shall give to the person, firm, or corporation owning or operating such wire or poles, at their nearest office and also at their principal office within the state, not less than 3 days' written notice of the time and place, when and where the removal of said poles or the cutting, raising, moving, or otherwise interfering with said poles or wires will be necessary.

History: **En. Sec. 2, Ch. 55, L. 1929; re-en. Sec. 2711.2, R.C.M. 1935; R.C.M. 1947, 24-137.**

69-4-603. Procedure to accomplish move. (1) It shall then be the duty of any person, firm, or corporation owning or operating said poles or wires after service of notice, as required by 69-4-602, to furnish competent workmen or linemen to remove such poles or raise or cut such wires as will be necessary to facilitate removing such house, building, derrick, or other structure.

(2) No person, firm, or corporation engaged in moving any house, building, derrick, or other structure shall raise, cut, or in any way interfere with any such poles or wires, unless the persons or authorities owning or having control of the same shall refuse to do so after having been notified, as required by 69-4-602; then, only competent and experienced workmen or linemen shall be employed in such work, and in such case the necessary and reasonable expense shall be paid by the owners of the poles and wires handled; provided, however, that any person, firm, or corporation engaged in moving such structure within the limits of any city or town shall pay all necessary and reasonable expense of raising or cutting such wires or removing such poles. The work shall be done in a careful and workmanlike manner,

and the poles and wires shall be promptly replaced and the damages thereto promptly repaired.

History: En. Sec. 3, Ch. 55, L. 1929; re-en. Sec. 2711.3, R.C.M. 1935; amd. Sec. 1, Ch. 55, L. 1951; R.C.M. 1947, 24-138.

69-4-604. Unlawful interference with lines. It shall be unlawful for any person, firm, or corporation engaged as principal or employee in moving any house, building, derrick, or other structure, as provided in this part, to move, touch, cut, molest, or in any way interfere with any electric light, electric power, telephone, or telegraph wires, cables, messenger wires, or guy wires or any poles bearing any such wires, except in compliance with the provisions of this part.

History: En. Sec. 4, Ch. 55, L. 1929; re-en. Sec. 2711.4, R.C.M. 1935; amd. Sec. 2, Ch. 174, L. 1937; amd. Sec. 15, Ch. 137, L. 1941; R.C.M. 1947, 24-139.

CHAPTER 5

POWER AND ENERGY COMPANIES

Part 1 — Territorial Integrity for Electric Suppliers

Section
69-5-101. Short title.
69-5-102. Definitions.
69-5-103. Territorial integrity of certain municipalities and electric suppliers in outlying areas.
69-5-104. Continuation of service to existing consumers.
69-5-105. Service to new consumers.
69-5-106. Service to industrial or commercial premises.
69-5-107. Service to property owned by electric supplier.
69-5-108. Agreements between electric suppliers as to service areas.
69-5-109. Special provisions for annexed areas.
69-5-110. Jurisdiction of district courts over disputes.
69-5-111. Judicial remedies.

Part 1

Territorial Integrity for Electric Suppliers

69-5-101. Short title. This part shall be known and may be cited as the "Territorial Integrity Act of 1971".

History: En. Sec. 1, Ch. 7, L. 1971; R.C.M. 1947, 70-501.

69-5-102. Definitions. When used in this part, the following definitions apply:

(1) "Commercial premises" means the premises where the business of selling, warehousing, or distributing a commodity or other business activity is carried on or professional or other services are rendered.

(2) "Electric cooperative" means a rural electric cooperative organized under Title 35, chapter 18, or a foreign corporation admitted thereunder to do business in Montana.

(3) "Electric supplier" means any electrical utility and any electric cooperative.

(4) "Electric utility" means a person, firm, or corporation other than an electric cooperative which furnishes electrical service to the public.

(5) "Industrial premises" means the premises where an industrial activity is carried on, including but not limited to the operation of factories, mills, machine shops, mines, oil wells, refineries, pumping, cleaning and dyeing works, creameries, canneries, stockyards, feedlots, military installations, or other extractive, fabricating, or processing activities.

(6) "Line" means any electric conductor operating at a nominal voltage level of 34,500 volts or less, measured phase-to-phase.

(7) "Premises" means a building, residence, structure, or facility to which electricity is being or is to be furnished; provided, that two or more buildings, structures, or facilities which are located on one tract or contiguous tracts of land and are utilized by one electric consumer for farming, business, commercial, industrial, institutional, governmental, or trailer court purposes shall together constitute one premises, except that any such building, structure, or facility, other than a trailer court, shall not, together with any other building, structure, or facility, constitute one premises if the electric service to it is separately metered and the charges for such service are calculated independently of charges for service to any other building, structure, or facility.

History: En. Sec. 2, Ch. 7, L. 1971; amd. Sec. 1, Ch. 68, L. 1975; R.C.M. 1947, 70-502.

69-5-103. Territorial integrity of certain municipalities and electric suppliers in outlying areas. Electric suppliers shall have rights and be subject to restrictions as provided in 69-5-104 through 69-5-107 with respect to service in:

(1) all areas outside the boundaries of any incorporated or unincorporated city, town, village, or borough having a population in excess of 3,500 persons on or after March 17, 1939; and

(2) every incorporated municipality in which 95% or more of the premises are served by an electric cooperative on February 1, 1971.

History: En. Sec. 3, Ch. 7, L. 1971; R.C.M. 1947, 70-503(part).

69-5-104. Continuation of service to existing consumers. Every electric supplier shall have the right to serve all premises being served by it or to which any of its facilities are attached on February 1, 1971.

History: En. Sec. 3, Ch. 7, L. 1971; R.C.M. 1947, 70-503(1).

69-5-105. Service to new consumers. (1) Subject to 69-5-106, the electric supplier having a line nearest the premises, as measured in accordance with subsection (2), shall serve premises initially requiring service after February 1, 1971.

(2) All measurements under this part shall be made on the shortest straight line which can be drawn from the conductor nearest the premises to the nearest permanent portion of the premises. Construction power for premises to be constructed shall be supplied by the electric supplier having the right to serve the completed premises.

History: En. Sec. 3, Ch. 7, L. 1971; R.C.M. 1947, 70-503(2).

69-5-106. Service to industrial or commercial premises. (1) An electric utility has the right to furnish electric service to any industrial or commercial premises if the estimated connected load for full plant operation at such industrial or commercial premises will be 400 kilowatts or larger within 2 years from the date of initial service provided such electric utility can extend its lines to such industrial or commercial premises at less cost to the electric utility or the industrial or commercial customer than the electric cooperative cost. The estimated connected load shall be determined from the plans and specifications prepared for construction of the premises or, if such estimate is not available, shall be determined by agreement of the electric supplier and the customer. The fact that actual connected load after 2 years from the date of initial service is less than 400 kilowatts does not affect the right of the electric supplier initially providing service to continue service to such premises.

(2) An independent consultant engineer agreeable to both electric suppliers or, in the event of failure of the electric suppliers to agree on a consultant engineer, an independent consultant engineer selected by the district court having jurisdiction, as provided in 69-5-110, shall determine which electric supplier can extend its lines to the consumer at the least cost. The cost of such engineering services shall be paid equally by the electric suppliers involved.

(3) No premises other than another such commercial or industrial premises shall be served from a line constructed under this section.

History: **En. Sec. 3, Ch. 7, L. 1971; R.C.M. 1947, 70-503(3); amd. Sec. 12, Ch. 43, L. 1979.**

69-5-107. Service to property owned by electric supplier. Nothing in 69-5-103 through 69-5-106 shall restrict the right of an electric supplier to furnish electric service to any property owned by the electric supplier.

History: **En. Sec. 3, Ch. 7, L. 1971; R.C.M. 1947, 70-503(4).**

69-5-108. Agreements between electric suppliers as to service areas. Notwithstanding the provisions of 69-5-103 through 69-5-107, any electric supplier may furnish electric service to any consumer at any premises being served by another electric supplier upon written agreement of the affected electric suppliers or at premises which another electric supplier has the right to serve pursuant to this part, upon written agreement of the affected electric suppliers.

History: **En. Sec. 4, Ch. 7, L. 1971; R.C.M. 1947, 70-504.**

69-5-109. Special provisions for annexed areas. With respect to service in areas which are annexed to incorporated municipalities having a population in excess of 3,500 persons, electric suppliers have rights and are subject to restrictions as follows:

(1) Every electric supplier has the right to serve all premises being served by it on the date of annexation.

(2) An electric cooperative does not have the right to serve any premises initially requiring service on or after the date of annexation. The restriction stated in this subsection does not apply to incorporated municipalities in which 95% or more of the premises were served by an electric cooperative on February 1, 1971.

History: **En. Sec. 5, Ch. 7, L. 1971; R.C.M. 1947, 70-505; amd. Sec. 13, Ch. 43, L. 1979.**

69-5-110. Jurisdiction of district courts over disputes. The district courts of the county or counties within which the premises or lines involved in any dispute are located shall have jurisdiction under this part over all electric suppliers subject to the provisions thereof.

History: En. Sec. 6, Ch. 7, L. 1971; R.C.M. 1947, 70-506.

69-5-111. Judicial remedies. (1) Whenever it shall appear that any electric supplier is failing or omitting or about to fail or omit to do anything required of it by this part or is doing or is about to do anything or to permit anything to be done contrary to or in violation of this part, any electric supplier affected thereby shall have the right to file a complaint in the district court briefly setting forth the acts or omissions complained of and requesting an injunction.

(2) If an affidavit showing that grounds exist therefor is filed with the complaint, a temporary restraining order shall be issued without notice. A copy of the temporary restraining order, complaint, and affidavit shall be served upon the defendant, together with an order to show cause why the temporary restraining order should not be made permanent, within 5 days after issuance of the temporary restraining order. The hearing on the order to show cause must be held at a date specified therein, which shall not be more than 10 days after service thereof and shall take precedence over all matters pending before the district court. A judgment making the injunction permanent or dissolving the temporary restraining order theretofore issued and dismissing the complaint must be made not later than 10 days after the hearing on the order to show cause.

(3) Any party aggrieved by the order may appeal to the supreme court of Montana by filing a notice of appeal in the district court within 20 days from entry of the order. The appeal must be perfected within 20 days thereafter and shall take precedence over all matters pending before the supreme court of Montana.

History: En. Sec. 7, Ch. 7, L. 1971; R.C.M. 1947, 70-507.

CHAPTER 6

COMMUNICATION UTILITIES

Part 1 — General Provisions

Section

69-6-101. Connection of telegraph and telephone lines.
69-6-102. Prohibition on consolidation of competing telegraph or telephone companies.
69-6-103. Maintenance of telephones in offices of railroad, telegraph, and express companies.
69-6-104. Control of telephone communications to and from a person holding hostages — nonliability of telephone company officials.

Part 1

General Provisions

69-6-101. Connection of telegraph and telephone lines. (1) Any association or corporation or the lessees or managers thereof, organized for the purpose, or any individual shall have the right to construct and maintain lines of telegraph or telephone within this state and connect the same with other lines.

(2) In case such persons or corporations cannot agree as to the compensation to be paid for the privilege of such connection, the acquiring of the right by the one to use the line of the other may be had in proceedings under Title 70, chapter 30, with the damages assessed and the right of connection granted as provided in Title 70, chapter 30.

History: En. Sec. 1001, Civ. C. 1895; re-en. Sec. 4401, Rev. C. 1907; re-en. Sec. 6646, R.C.M. 1921; re-en. Sec. 6646, R.C.M. 1935; R.C.M. 1947, 70-302.

69-6-102. Prohibition on consolidation of competing telegraph or telephone companies. No telegraph or telephone company shall:

(1) consolidate with or hold a controlling interest in the stock or bonds of any other telegraph or telephone company owning or having the control of a competing line; or

(2) acquire, by purchase or otherwise, any other competing line of telegraph or telephone.

History: En. Sec. 1002, Civ. C. 1895; re-en. Sec. 4402, Rev. C. 1907; re-en. Sec. 6647, R.C.M. 1921; re-en. Sec. 6647, R.C.M. 1935; R.C.M. 1947, 70-303.

69-6-103. Maintenance of telephones in offices of railroad, telegraph, and express companies. (1) It is hereby made the duty of every railroad, telegraph, and express company doing business in the state to install or allow to be installed in its ticket office, public office, and freight office, in all cities and towns in this state, where there are, at the time, one or more public telephone exchanges, a telephone of each public telephone exchange in said city or town and to maintain in each of said offices direct telephone connection with each of such exchanges. Nothing herein contained shall be construed to require said railroad, telegraph, or express company to build a telephone line, it being intended to require such company or companies to install or allow to be installed a telephone in each of its offices where it can be obtained by them as they may be obtained for other business offices in the same vicinity. Each railroad, telegraph, and express company shall cause to be promptly answered all calls made over such telephone connection during business hours. Such railroad, telegraph, and express companies shall not, in the absence of an agreement to the effect, be required to bear the expense incident to the installation of said telephones or to any charges for the use thereof. Over such telephone connection, such railroad, telegraph, or express company shall cause prompt and correct replies to be made to all reasonable and proper inquiries over such connection during business hours concerning the passenger, freight, or telegraph service of such railroad, telegraph, or express company.

(2) The term "business hours", as used in this section, shall be construed to mean such times as the office or depot of such railroad, telegraph, or express company may be open, with an officer or agent of such railroad, telegraph, or express company in charge for the transacting of business.

(3) Any railroad, telegraph, or express company failing or refusing to comply with the provisions of this section shall be deemed guilty of a misdemeanor.

History: (1)En. Sec. 1, Ch. 182, L. 1907; Sec. 4340, Rev. C. 1907; re-en. Sec. 6579, R.C.M. 1921; re-en. Sec. 6579, R.C.M. 1935; Sec. 72-624, R.C.M. 1947; (2)En. Sec. 2, Ch. 182, L. 1907; Sec. 4341,

Rev. C. 1907; re-en. Sec. 6580, R.C.M. 1921; re-en. Sec. 6580, R.C.M. 1935; Sec. 72-625, R.C.M. 1947; (3)En. Sec. 3, Ch. 182, L. 1907; Sec. 4342, Rev. C. 1907; re-en. Sec. 6581, R.C.M. 1921; re-en. Sec. 6581, R.C.M. 1935; Sec. 72-626, R.C.M. 1947; R.C.M. 1947, 72-624, 72-625, 72-626.

69-6-104. Control of telephone communications to and from a person holding hostages — nonliability of telephone company officials. A supervisory law enforcement official who has jurisdiction in a geographical area where hostages are being held and who has probable cause to believe that the holder of the hostages is committing a crime may order a previously designated telephone security employee or other telephone company official to arrange to cut, reroute, or divert telephone lines in order to prevent the holder of the hostages from communicating with any person other than a law enforcement officer or an individual authorized by a law enforcement officer. The serving telephone company within the geographical area of a law enforcement agency shall designate a telephone company security employee or other telephone company official and an alternate to provide all required assistance to law enforcement officials to carry out the purposes of this section. A telephone security employee or other telephone company official acting in good faith under an order given pursuant to this section does not commit the offense of violating privacy in communications and is not liable in any civil action brought as a result of such good faith actions.

History: En. Sec. 2, Ch. 356, L. 1979.

Compiler's Comments

Codification. Sec. 3, Ch. 356, L. 1979, provided: "Section 2 is intended to be codified as an integral part of Title 69, chapter 6."

CHAPTER 7

MUNICIPAL UTILITIES

Part 1 — Regulation of Rates by Municipality

Section

69-7-101. Municipal utilities — regulation by municipality — limitation.
69-7-102. Rate increases over maximum.
Sections 69-7-103 through 69-7-110 reserved.
69-7-111. Municipal rate hearing required — notice.
69-7-112. Conduct of municipal rate hearing.
69-7-113. Appeals.
Sections 69-7-114 through 69-7-120 reserved.
69-7-121. Annual report to public service commission.

Part 2 — Operation of Utilities

69-7-201. Rules for operation of municipal utility.

Chapter Compiler's Comments

1981 Title: The title to Ch. 607, L. 1981 (HB 765), read: "An act to provide for municipal regulation of municipally owned utilities; to establish maximum increases allowed; to require reporting to the public service commission and the Montana consumer counsel; and amending section 69-3-101, MCA; and providing a period of effectiveness."

Effective Date and Termination Date: Section 9, Ch. 607, L. 1981, provided: "This act shall become effective on July 1, 1981. It shall terminate on July 1, 1983."

Chapter Cross-References

Metropolitan sanitary district ratemaking, 7-13-144.

Part 1

Regulation of Rates by Municipality

69-7-101. *(Temporary)* **Municipal utilities — regulation by municipality — limitation.** A municipality has the power and authority to regulate, establish, and change, as it considers proper, rates, charges, and classifications imposed for utility services to its inhabitants and other persons served by municipal utility systems. Rates, charges, and classifications shall be reasonable and just and, except as provided in 69-7-102, they may not be raised to yield more than a 12% increase in total annual revenues or, in the case of mandated federal and state capital improvements, the increase may not exceed amounts necessary to meet the requirements of bond indentures or loan agreements required to finance the local government's share of the mandated improvements.

History: En. Sec. 1, Ch. 607, L. 1981.

69-7-102. *(Temporary)* **Rate increases over maximum.** If a municipal utility requires rate increases that yield an increase in total revenues in excess of 12% in any one year or rate increases for mandated federal and state capital improvements for which the increase exceeds amounts necessary to meet the requirements of bond indentures or loan agreements required to finance the local government's share of the mandated improvements, it must make application for such increases to the public service commission.

History: En. Sec. 5, Ch. 607, L. 1981.

69-7-103 through 69-7-110 reserved.

69-7-111. *(Temporary)* **Municipal rate hearing required — notice.** (1) If the governing body of a municipality considers it advisable to regulate, establish, or change rates, charges, or classifications imposed on its customers, it shall order a hearing to be held before it at a time and place specified.

(2) Notice of the hearing shall be published in a newspaper as provided in 7-1-4127.

(3) (a) The notice shall be published three times with at least 6 days separating each publication. The first publication may be no more than 28 days prior to the hearing, and the last publication may be no less than 3 days prior to the hearing.

(b) The notice must also be mailed at least 7 days and not more than 30 days prior to the hearing to persons served by the utility. The notice shall accompany the bill for services of that utility and must be mailed within the prescribed time period. This notice must contain an estimate of the amount the customer's average monthly bill will increase.

(4) The published notice must contain:

(a) the date, time, and place of the hearing;
(b) a brief statement of the proposed action; and
(c) the address and telephone number of a person who may be contacted for further information regarding the hearing.

(5) Notice of all hearings shall be mailed first class, postage prepaid, to the Montana consumer counsel.

History: **En. Sec. 2, Ch. 607, L. 1981.**

69-7-112. *(Temporary)* **Conduct of municipal rate hearing.** (1) At the hearing, all persons, associations, corporations or companies affected or interested, including the Montana consumer counsel, may be present and represented by counsel. The hearing may be continued from time to time by the governing body of the municipality. At the conclusion of the hearing, all interested parties shall be allowed to make such arguments as they may consider proper.

(2) Within 30 days after the hearing, the governing body of the municipality shall issue its decision. The decision is final 10 days after being filed with the municipal clerk. A copy of each revised rate schedule shall be filed with the public service commission upon final decision.

History: **En. Sec. 3, Ch. 607, L. 1981.**

69-7-113. *(Temporary)* **Appeals.** (1) A party to a municipal rate hearing may appeal the decision of the municipality to the district court in whose jurisdiction the municipality lies.

(2) A person may appeal the adoption or application of municipal utility rules to the district court in whose jurisdiction the municipality lies.

History: **En. Sec. 7, Ch. 607, L. 1981.**

69-7-114 through 69-7-120 reserved.

69-7-121. *(Temporary)* **Annual report to public service commission.** A municipality regulating its utility services must make an annual report to the public service commission and furnish a copy thereof to the Montana consumer counsel. The report shall set forth the rates and number of users of each service and classification, all rate increases, and the total income and expenditures of the utility as provided in 69-3-203.

History: **En. Sec. 4, Ch. 607, L. 1981.**

Part 2

Operation of Utilities

69-7-201. *(Temporary)* **Rules for operation of municipal utility.** Each municipal utility shall adopt, with the concurrence of the municipal governing body, rules for the operation of the utility. The rules shall contain, at a minimum, those requirements of good practice which can be normally expected for the operation of a utility. They shall define or provide for use of meter or flat rate user charges, the classification of users, applications for service, and uses of the service. The rules shall outline the utility's procedure for discontinuance of service and reestablishment of service as well as the extension of service to users within the municipal boundaries and outside the municipal boundaries. The rule shall provide that rate increases for comparable classifications and zones outside the municipal boundaries may not exceed those set within the municipal limits under the provisions of this chapter.

History: **En. Sec. 6, Ch. 607, L. 1981.**

CHAPTERS 8 THROUGH 10

RESERVED

CHAPTER 11

REGULATION OF CARRIERS

Part 1 — General Provisions

Section
69-11-101. Definitions.
69-11-102. Restrictions on preferential treatment.
69-11-103. Time schedules to be followed.
69-11-104. Right to compensation.
69-11-105. Effect of agreements on rights and obligations of carrier and other parties.
69-11-106. Gratuitous carriers.
69-11-107. General duty of care of carriers for reward.
69-11-108. Prohibition on confiscation of fuel.
69-11-109. Provision for transportation of passengers and property for free or for reduced rates.
Sections 69-11-110 through 69-11-120 reserved.
69-11-121. Detriment caused by carrier.

Part 2 — Carriers of Passengers

69-11-201. Requirements for carriers of persons for reward.
69-11-202. Establishment and notice of schedule for passenger carriers.
69-11-203. Transport of passengers.
69-11-204. Carriage of baggage by carriers of persons.
69-11-205. Payment of fare by passengers.
69-11-206. Lien for payment of fare.
69-11-207. Authorization for free transportation.
69-11-208. Classes of persons who may receive free transportation.
69-11-209. Ejection of passengers.

Part 3 — Carriers of Messages

69-11-301. Requirements for carriers of messages for reward.
69-11-302. Order of transmission of messages.
69-11-303. Damages for refused or delayed message.
69-11-304. Loss of valuable letters.

Part 4 — Carriers of Property

69-11-401. General definitions.
69-11-402. Relationship of carrier to consignor and consignee.
69-11-403. Acceptance of freight.
69-11-404. Delivery of freight.
69-11-405. Procedure to terminate carrier's liability.
69-11-406. Payment of freightage.

69-11-407. Natural increase of freight.
69-11-408. Apportionment of freightage by contract.
69-11-409. Adjustment of freightage for change in time or place of delivery.
69-11-410. Carrier's lien for freightage.
69-11-411. Sale of perishable property for freightage.
69-11-412. Division of joint rates among carriers.
Sections 69-11-413 through 69-11-420 reserved.
69-11-421. Liability of inland carriers for loss.
69-11-422. Permissible limitations on liability.
69-11-423. Meaning of delivering carrier.
69-11-424. Examination of shipment.
69-11-425. Period in which to file claims.
69-11-426. Processing of claims for damage.
69-11-427. Liability between carriers.
69-11-428. Liability for delay.
69-11-429. Liability for valuable cargo.

Chapter Compiler's Comments

Interim Study: HJR 27 and HJR 33 (1981) requested an interim study of transportation in Montana. The Legislative Council designated the Joint Subcommittee on Transportation to conduct the study.

Part 1

General Provisions

69-11-101. Definitions. (1) Everyone who offers to the public to carry persons, property, or messages, excepting only telegraphic or telephonic messages, is a common carrier of whatever he thus offers to carry.

(2) The "contract of carriage" is a contract for the conveyance of property, persons, or messages from one place to another.

History: (1)En. Sec. 2870, Civ. C. 1895; re-en. Sec. 5332, Rev. C. 1907; re-en. Sec. 7846, R.C.M. 1921; Cal. Civ. C. Sec. 2168; Based on Field Civ. C. Sec. 1134; re-en. Sec. 7846, R.C.M. 1935; Sec. 8-701, R.C.M. 1947; (2)En. Sec. 2770, Civ. C. 1895; re-en. Sec. 5296, Rev. C. 1907; re-en. Sec. 7811, R.C.M. 1921; Cal. Civ. C. Sec. 2085; Field Civ. C. Sec. 1085; re-en. Sec. 7811, R.C.M. 1935; Sec. 8-401, R.C.M. 1947; R.C.M. 1947, 8-401, 8-701.

69-11-102. Restrictions on preferential treatment. (1) A common carrier must not give preference in time, price, or otherwise to one person over another.

(2) A common carrier must always give a preference in time and may give a preference in price to the United States and to this state.

History: (1)En. Sec. 2872, Civ. C. 1895; re-en. Sec. 5334, Rev. C. 1907; re-en. Sec. 7848, R.C.M. 1921; Cal. Civ. C. Sec. 2170; re-en. Sec. 7848, R.C.M. 1935; Sec. 8-703, R.C.M. 1947; (2)En. Sec. 2873, Civ. C. 1895; re-en. Sec. 5335, Rev. C. 1907; re-en. Sec. 7849, R.C.M. 1921; Cal. Civ. C. Sec. 2171; Field Civ. C. Sec. 1137; re-en. Sec. 7849, R.C.M. 1935; Sec. 8-704, R.C.M. 1947; R.C.M. 1947, 8-703(part), 8-704.

69-11-103. Time schedules to be followed. A common carrier must start at such time and place as he announces to the public unless detained by accident or the elements or in order to connect with carriers on other lines of travel.

History: En. Sec. 2874, Civ. C. 1895; re-en. Sec. 5336, Rev. C. 1907; re-en. Sec. 7850, R.C.M. 1921; Cal. Civ. C. Sec. 2172; re-en. Sec. 7850, R.C.M. 1935; R.C.M. 1947, 8-705.

69-11-104. Right to compensation. A common carrier is entitled to a reasonable compensation, and no more, which he may require to be paid in advance. If payment thereof is refused, he may refuse to carry.

History: En. Sec. 2875, Civ. C. 1895; re-en. Sec. 5337, Rev. C. 1907; re-en. Sec. 7851, R.C.M. 1921; Cal. Civ. C. Sec. 2173; Field Civ. C. Sec. 1139; re-en. Sec. 7851, R.C.M. 1935; R.C.M. 1947, 8-706.

69-11-105. Effect of agreements on rights and obligations of carrier and other parties. (1) The obligations of a common carrier cannot be limited by general notice on his part, but may be limited by special contract.

(2) A common carrier cannot be exonerated, by any agreement made in anticipation thereof, from liability for the gross negligence, fraud, or willful wrong of himself or his servants.

(3) A passenger, consignor, or consignee, by accepting a ticket, bill of lading, or written contract for carriage, with a knowledge of its terms, assents to the rate of hire and the time, place, and manner of delivery therein stated, but his assent to any other modification of the carrier's rights or obligations contained in such instrument can be manifested only by his signature to the same, except as otherwise provided in the Uniform Commercial Code.

History: (1)En. Sec. 2876, Civ. C. 1895; re-en. Sec. 5338, Rev. C. 1907; re-en. Sec. 7852, R.C.M. 1921; Cal. Civ. C. Sec. 2174; re-en. Sec. 7852, R.C.M. 1935; Sec. 8-707, R.C.M. 1947; (2)En. Sec. 2877, Civ. C. 1895; re-en. Sec. 5339, Rev. C. 1907; re-en. Sec. 7853, R.C.M. 1921; Cal. Civ. C. Sec. 2175; Field Civ. C. Sec. 1141; re-en. Sec. 7853, R.C.M. 1935; Sec. 8-708, R.C.M. 1947; (3)En. Sec. 2878, Civ. C. 1895; re-en. Sec. 5340, Rev. C. 1907; re-en. Sec. 7854, R.C.M. 1921; Cal. Civ. C. Sec. 2176; Field Civ. C. Sec. 1142; re-en. Sec. 7854, R.C.M. 1935; amd. Sec. 11-105, Ch. 264, L. 1963; Sec. 8-709, R.C.M. 1947; R.C.M. 1947, 8-707, 8-708, 8-709.

69-11-106. Gratuitous carriers. (1) Carriers without reward are subject to the same rules as employees without reward, except as is otherwise provided by this chapter.

(2) A carrier without reward who has begun to perform his undertaking must complete it in like manner as if he had received a reward unless he restores the person or thing carried to as favorable a position as before he commenced his carriage.

(3) A carrier of persons without reward must use ordinary care and diligence for their safe carriage. A carrier of property without reward must use at least slight care and diligence.

History: (1)En. Sec. 2771, Civ. C. 1895; re-en. Sec. 5297, Rev. C. 1907; re-en. Sec. 7812, R.C.M. 1921; Cal. Civ. C. Sec. 2089; Field Civ. C. Sec. 1090; re-en. Sec. 7812, R.C.M. 1935; Sec. 8-402, R.C.M. 1947; (2)En. Sec. 2772, Civ. C. 1895; re-en. Sec. 5298, Rev. C. 1907; re-en. Sec. 7813, R.C.M. 1921; Cal. Civ. C. Sec. 2090; Field Civ. C. Sec. 1091; re-en. Sec. 7813, R.C.M. 1935; Sec. 8-403, R.C.M. 1947; (3)Ap. p. Sec. 2780, Civ. C. 1895; re-en. Sec. 5299, Rev. C. 1907; re-en. Sec. 7814, R.C.M. 1921; Cal. Civ. C. Sec. 2096; Field Civ. C. Sec. 1092; re-en. Sec. 7814, R.C.M. 1935; Sec. 8-404, R.C.M. 1947; Ap. p. Sec. 2810, Civ. C. 1895; re-en. Sec. 5306, Rev. C. 1907; re-en. Sec. 7821, R.C.M. 1921; Cal. Civ. C. Sec. 2114; Field Civ. C. Sec. 1099; re-en. Sec. 7821, R.C.M. 1935; Sec. 8-411, R.C.M. 1947; R.C.M. 1947, 8-402, 8-403, 8-404, 8-411(part).

69-11-107. General duty of care of carriers for reward. (1) A carrier of persons for reward must use the utmost care and diligence for their safe carriage, must provide everything necessary for that purpose, and must exercise to that end a reasonable degree of skill.

(2) A carrier of property for reward must use at least ordinary care and diligence in the performance of all his duties.

(3) A carrier of messages for reward must use great care and diligence in the transmission and delivery of messages.

History: (1)En. Sec. 2790, Civ. C. 1895; re-en. Sec. 5300, Rev. C. 1907; re-en. Sec. 7815, R.C.M. 1921; Cal. Civ. C. Sec. 2100; Field Civ. C. Sec. 1093; re-en. Sec. 7815, R.C.M. 1935; Sec. 8-405, R.C.M. 1947; (2)En. Sec. 2810, Civ. C. 1895; re-en. Sec. 5306, Rev. C. 1907; re-en. Sec. 7821, R.C.M. 1921; Cal. Civ. C. Sec. 2114; Field Civ. C. Sec. 1099; re-en. Sec. 7821, R.C.M. 1935; Sec. 8-411, R.C.M. 1947; (3)En. Sec. 2861, Civ. C. 1895; re-en. Sec. 5331, Rev. C. 1907; re-en. Sec. 7845, R.C.M. 1921; Cal. Civ. C. Sec. 2162; Field Civ. C. Sec. 1133; re-en. Sec. 7845, R.C.M. 1935; Sec. 8-419, R.C.M. 1947; R.C.M. 1947, 8-405, 8-411(part), 8-419.

69-11-108. Prohibition on confiscation of fuel. (1) It shall be unlawful for any person, railway company, or common carrier to confiscate or take for his or its own use or for the use of another any coal or other fuel in transit except when such coal or other fuel is necessary for the preservation of life or property or is required for the moving of trains of such common carrier. In a suit under this section to recover the penalty and damages, the burden of proof shall be on the person, railroad company, or common carrier confiscating the coal or other fuel to show that such coal or other fuel was necessary for the preservation of life or property or was required for the moving of trains of such common carrier.

(2) Any person, railroad company, or common carrier who shall confiscate or take any coal or fuel, either for his or its own use or for the use of another, shall be liable to the consignee or owner of such coal or fuel in double the value of such coal or fuel at the point of shipment and such other damages as may be caused by the confiscation of such coal. Such liability shall be exclusive of and in addition to any and all charges for the transportation of such coal or fuel, which charges for the transportation shall be paid by the party confiscating such coal or fuel. In every case wherein coal or other fuel is taken or used by any such person, railroad company, or common carrier, it shall be the duty of such person, railroad company, or common carrier to notify the consignee by telegram or letter, immediately, of the taking of such coal and to pay and compensate him therefor within 30 days from the time of the taking.

(3) Any person, corporation, or common carrier who shall violate the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than $50 or more than $200.

History: (1)En. Sec. 1, Ch. 119, L. 1907; Sec. 4355, Rev. C. 1907; re-en. Sec. 6592, R.C.M. 1921; re-en. Sec. 6592, R.C.M. 1935; Sec. 72-637, R.C.M. 1947; (2)En. Sec. 2, Ch. 119, L. 1907; Sec. 4356, Rev. C. 1907; re-en. Sec. 6593, R.C.M. 1921; re-en. Sec. 6593, R.C.M. 1935; Sec. 72-638, R.C.M. 1947; (3)En. Sec. 3, Ch. 119, L. 1907; Sec. 4357, Rev. C. 1907; re-en. Sec. 6594, R.C.M. 1921; re-en. Sec. 6594, R.C.M. 1935; Sec. 72-639, R.C.M. 1947; R.C.M. 1947, 72-637, 72-638, 72-639.

69-11-109. Provision for transportation of passengers and property for free or reduced rates. (1) No provisions of the laws of this state prevent any person, association, company, or corporation engaged as a common carrier of persons or property in this state from carrying, storing, or handling property free or at reduced rates for the United States, for state or municipal governments, or for charitable institutions; property which is being transported to or from fairs and expositions for exhibit thereat; or cars used by the government of the United States or the state for the transportation of fish and from carrying free or at reduced rates agents and employees employed in such transportation; and nothing therein contained prevents such person, association, company, or corporation from issuing free transportation or selling tickets at reduced rates to the classes of persons listed in 69-11-208.

(2) When free transportation or a ticket at a reduced rate is issued to any officer or any president or member of the faculty of any educational institution referred to in 69-11-208(1)(q), it shall only be issued upon the application of the secretary of state and the transportation or ticket shall be delivered to the secretary of state for delivery to the person or persons applying therefor. The secretary of state shall keep record of all transportation and tickets at reduced rates so received and delivered by him. The state officer and the president and faculty of the state educational institutions, when traveling upon any free transportation, may not charge any mileage against the state, or if traveling upon a ticket sold at reduced fare, they may not charge mileage in excess of the cost of the ticket.

(3) The carrying free or at reduced rates of property or persons in any of the classes above specified shall be held to be a reasonable classification by common carriers for such purposes and not to be unjust discrimination. The carriage and transportation by any common carrier at free or reduced rates in any of the cases above specified is not a violation of any of the provisions of the laws of Montana and does not subject the common carrier to any penalty therefor.

History: (1), (2)En. Sec. 1, Ch. 53, L. 1913; re-en. Sec. 6575, R.C.M. 1921; re-en. Sec. 6575, R.C.M. 1935; amd. Sec. 18, Ch. 315, L. 1974; Sec. 72-620, R.C.M. 1947; (3)En. Sec. 2, Ch. 53, L. 1913; re-en. Sec. 6576, R.C.M. 1921; re-en. Sec. 6576, R.C.M. 1935; Sec. 72-621, R.C.M.1947; R.C.M. 1947, 72-620, 72-621; amd. Sec. 14, Ch. 43, L. 1979; amd. Sec. 180, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "69-11-208(1)(q)" for "69-11-208(1)(r)" in (2).

69-11-110 through 69-11-120 reserved.

69-11-121. Detriment caused by carrier. (1) The detriment caused by the breach of a carrier's obligation to accept freight, messages, or passengers is deemed to be the difference between the amount which he had a right to charge for the carriage and the amount which it would be necessary to pay for the same service when it ought to be performed.

(2) The detriment caused by the breach of a carrier's obligation to deliver freight where he has not converted it to his own use is deemed to be the value thereof at the place and on the day at which it should have been delivered, deducting the freightage to which he would have been entitled if he had completed the delivery.

(3) The detriment caused by a carrier's delay in the delivery of freight is deemed to be the depreciation in the intrinsic value of the freight during the delay and also the depreciation, if any, in the market value thereof, otherwise than by reason of a depreciation in its intrinsic value, at the place where it ought to have been delivered and between the day at which it ought to have been delivered and the day of its actual delivery.

(4) The damages prescribed by this section are exclusive of exemplary damages and interest except where those are expressly mentioned. Notwithstanding the provisions of this section, no person can recover a greater

amount in damages for the breach of an obligation than he could have gained by the full performance thereof on both sides, except as provided in 27-1-303.

History: En. Secs. 4315, 4316, 4317, 4364, 4365, Civ. C. 1895; re-en. Secs. 6063, 6064, 6065, 6085, 6086, Rev. C. 1907; re-en. Secs. 8681, 8682, 8683, 8703, 8704, R.C.M. 1921; Cal. Civ. C. Secs. 3315, 3316, 3317, 3357, 3358; Field. Civ. C. Secs. 1855, 1856, 1857, 1876, 1877; re-en. Secs. 8681, 8682, 8683, 8703, 8704, R.C.M. 1935; R.C.M. 1947, 17-315, 17-316, 17-317, 17-605(part), 17-606(part); amd. Sec. 15, Ch. 43, L. 1979.

Part 2

Carriers of Passengers

69-11-201. Requirements for carriers of persons for reward. (1) A carrier of persons for reward is bound to provide vehicles safe and fit for the purposes to which they are put and is not excused for default in this respect by any degree of care.

(2) A carrier of persons for reward must not overcrowd or overload his vehicle.

(3) A carrier of persons for reward must give to passengers all such accommodations as are usual and reasonable, must treat them with civility, and give them a reasonable degree of attention.

(4) A carrier of persons for reward must travel at a reasonable rate of speed, without any unreasonable delay or deviation from his proper route.

History: (1)En. Sec. 2791, Civ. C. 1895; re-en. Sec. 5301, Rev. C. 1907; re-en. Sec. 7816, R.C.M. 1921; Cal. Civ. C. Sec. 2101; Field Civ. C. Sec. 1094; re-en. Sec. 7816, R.C.M. 1935; Sec. 8-406, R.C.M. 1947; (2)En. Sec. 2792, Civ. C. 1895; re-en. Sec. 5302, Rev. C. 1907; re-en. Sec. 7817, R.C.M. 1921; Cal. Civ. C. Sec. 2102; Field Civ. C. Sec. 1095; re-en. Sec. 7817, R.C.M. 1935; Sec. 8-407, R.C.M. 1947; (3)En. Sec. 2793, Civ. C. 1895; re-en. Sec. 5303, Rev. C. 1907; re-en. Sec. 7818, R.C.M. 1921; Cal. Civ. C. Sec. 2103; Field Civ. C. Sec. 1096; re-en. Sec. 7818, R.C.M. 1935; Sec. 8-408, R.C.M. 1947; (4)En. Sec. 2794, Civ. C. 1895; re-en. Sec. 5304, Rev. C. 1907; re-en. Sec. 7819, R.C.M. 1921; Cal. Civ. C. Sec. 2104; Field Civ. C. Sec. 1097; re-en. Sec. 7819, R.C.M. 1935; R.C.M. 1947, 8-406, 8-407, 8-408, 8-409.

69-11-202. Establishment and notice of schedule for passenger carriers. Every common carrier of passengers by railroad or by vessel plying upon waters lying wholly within this state shall establish a schedule time for the starting of trains or vessels from their respective stations or wharves, of which public notice shall be given, and shall, weather permitting, except in case of accident or detention caused by connecting lines, start their trains or vessels at or within 10 minutes after the schedule time so established and notice given, under a penalty of $250 for each neglect so to do, to be recovered by action before any court of competent jurisdiction, upon complaint filed by the county attorney of the county in the name of the state, and paid into the common school fund of the county.

History: En. Sec. 2872, Civ. C. 1895; re-en. Sec. 5334, Rev. C. 1907; re-en. Sec. 7848, R.C.M. 1921; Cal. Civ. C. Sec. 2170; re-en. Sec. 7848, R.C.M. 1935; R.C.M. 1947, 8-703(part).

69-11-203. Transport of passengers. (1) A common carrier of persons must provide a sufficient number of vehicles to accommodate all the passengers who can be reasonably expected to require carriage at any one time.

(2) A common carrier of persons must provide every passenger with a seat. He must not overload his vehicle by receiving and carrying more passengers than its rated capacity allows.

(3) A common carrier of persons may make rules for the conduct of his business and may require passengers to conform to them if they are lawful, public, uniform in their application, and reasonable.

History: (1)En. Sec. 2894, Civ. C. 1895; re-en. Sec. 5346, Rev. C. 1907; re-en. Sec. 7860, R.C.M. 1921; Cal. Civ. C. Sec. 2184; Based on Field Civ. C. Sec. 1147; re-en. Sec. 7860, R.C.M. 1935; Sec. 8-805, R.C.M. 1947; (2)En. Sec. 2895, Civ. C. 1895; re-en. Sec. 5347, Rev. C. 1907; re-en. Sec. 7861, R.C.M. 1921; Cal. Civ. C. Sec. 2185; Based on Field Civ. C. Sec. 1148; re-en. Sec. 7861, R.C.M. 1935; Sec. 8-806, R.C.M. 1947; (3)En. Sec. 2896, Civ. C. 1895; re-en. Sec. 5348, Rev. C. 1907; re-en. Sec. 7862, R.C.M. 1921; Cal. Civ. C. Sec. 2186; Field Civ. C. Sec. 1149; re-en. Sec. 7862, R.C.M. 1935; Sec. 8-807, R.C.M. 1947; R.C.M. 1947, 8-805, 8-806, 8-807.

69-11-204. Carriage of baggage by carriers of persons. (1) Baggage may consist of any articles intended for the use of a passenger while traveling or for his personal equipment.

(2) A common carrier of persons, unless his vehicle is fitted for the reception of persons exclusively, must receive and carry a reasonable amount of baggage for each passenger without charge, except for an excess of weight over 100 pounds to a passenger; but if such carrier is a proprietor of a stage line, he may not receive and carry for each passenger by such stage line, without charge, more than 60 pounds of baggage.

(3) The liability of a carrier for baggage received by him with a passenger is the same as that of a common carrier of property.

(4) A common carrier must deliver every passenger's baggage, whether within the prescribed weight or not, immediately upon the arrival of the passenger at his destination and, unless the vehicle would be overcrowded or overloaded thereby, must carry it on the same vehicle by which he carries the passenger to whom it belonged; except, that where baggage is transported by rail, it must be checked and carried in a regular baggage car and whenever passengers neglect or refuse to have their baggage so checked and transported, it is carried at their risk.

History: (1)En. Sec. 2891, Civ. C. 1895; re-en. Sec. 5343, Rev. C. 1907; re-en. Sec. 7857, R.C.M. 1921; Cal. Civ. C. Sec. 2181; Field Civ. C. Sec. 1144; re-en. Sec. 7857, R.C.M. 1935; Sec. 8-802, R.C.M. 1947; (2)En. Sec. 2890, Civ. C. 1895; re-en. Sec. 5342, Rev. C. 1907; re-en. Sec. 7856, R.C.M. 1921; Cal. Civ. C. Sec. 2180; Based on Field Civ. C. Sec. 1143; re-en. Sec. 7856, R.C.M. 1935; Sec. 8-801, R.C.M. 1947; (3)En. Sec. 2892, Civ. C. 1895; re-en. Sec. 5344, Rev. C. 1907; re-en. Sec. 7858, R.C.M. 1921; Cal. Civ. C. Sec. 2182; Field Civ. C. Sec. 1145; re-en. Sec. 7858, R.C.M. 1935; Sec. 8-803, R.C.M. 1947; (4)En. Sec. 2893, Civ. C. 1895; re-en. Sec. 5345, Rev. C. 1907; re-en. Sec. 7859, R.C.M. 1921; Cal. Civ. C. Sec. 2183; re-en. Sec. 7859, R.C.M. 1935; Sec. 8-804, R.C.M. 1947; R.C.M. 1947, 8-801, 8-802, 8-803, 8-804.

69-11-205. Payment of fare by passengers. A common carrier may demand the fare of passengers either at starting or at any subsequent time.

History: En. Sec. 2897, Civ. C. 1895; re-en. Sec. 5349, Rev. C. 1907; re-en. Sec. 7863, R.C.M. 1921; Cal. Civ. C. Sec. 2187; Field Civ. C. Sec. 1150; re-en. Sec. 7863, R.C.M. 1935; R.C.M. 1947, 8-808.

69-11-206. Lien for payment of fare. A common carrier has a lien upon the baggage of a passenger for the payment of such fare as he is entitled to from him. This lien is regulated by the law on liens.

History: En. Sec. 2900, Civ. C. 1895; re-en. Sec. 5352, Rev. C. 1907; re-en. Sec. 7866, R.C.M. 1921; Cal. Civ. C. Sec. 2191; Field Civ. C. Sec. 1153; re-en. Sec. 7866, R.C.M. 1935; R.C.M. 1947, 8-811.

69-11-207. Authorization for free transportation. (1) No common carrier of passengers shall directly or indirectly issue, furnish, or give any free ticket, free pass, or free transportation for the carriage or passage of any person within this state, except as permitted in 69-11-208; nor shall any common carrier, in the sale of tickets for transportation at reduced rates, discriminate between persons purchasing the same, except the persons described in 69-11-208.

(2) The words "free ticket", "free pass", and "free transportation", as used in this section and 69-11-208, shall include any ticket, pass, contract, permit, or transportation issued, furnished, or given to any person by any common carrier of passengers for carriage or passage for any other consideration than money paid in the usual way at the rate, fare, or charge open to all who desire to purchase.

(3) Any common carrier or its officers, agents, or representatives violating any of the provisions of this section and 69-11-208 shall be fined in the sum of not less than $10 or more than $300 for each offense, and any person, other than the persons excepted in 69-11-208, who accepts or uses any free ticket, free pass, or free transportation for carriage or passage within this state shall be subject to a like penalty.

History: **(1), (2)En. Sec. 1, Ch. 136, L. 1911; re-en. Sec. 6572, R.C.M. 1921; re-en. Sec. 6572, R.C.M. 1935; Sec. 72-616, R.C.M. 1947; (3)En. Sec. 3, Ch. 136, L. 1911; re-en. Sec. 6574, R.C.M. 1921; re-en. Sec. 6574, R.C.M. 1935; Sec. 72-619, R.C.M. 1947; R.C.M. 1947, 72-616, 72-619.**

69-11-208. Classes of persons who may receive free transportation. (1) The persons to whom free tickets, free passes, free transportation, and discriminating reduced rates may be issued, furnished, or given are the following:

(a) the officers, agents, employees, attorneys, physicians, and surgeons of such common carriers of passengers and the officers and employees of other common carriers upon the exchange of passes or tickets;

(b) the families of the persons included in subsection (1)(a);

(c) the general officers of any such common carriers;

(d) employees of sleeping car and express car companies and linemen of telegraph and telephone companies, railway mail service employees, post-office inspectors, customs inspectors, and immigration inspectors, newsboys and newsgirls on trains, and baggage agents;

(e) persons injured in wrecks and physicians and nurses attending such persons;

(f) passengers traveling with the object of providing relief in cases of railroad accident, general epidemic, pestilence, or other calamitous visitation;

(g) necessary caretakers of livestock, vegetables, and fruit, including return transportation to forwarding stations;

(h) the officers, agents, or regularly accredited representatives of labor organizations composed wholly of employees of railway companies;

(i) inmates of homes for the reform or rescue of the disadvantaged, including those about to enter and those returning home after discharge, and boards of managers, including officers and superintendents, of such homes;

(j) superannuated and pensioned employees and members of their families and surviving spouses of such members;

(k) employees crippled and disabled in the service of the common carrier of passengers;

(l) policemen and firefighters of any city, wearing the insignia of their office, within the limits of such city;

(m) ministers of religion, newspaper employees in exchange for advertising, traveling secretaries of Young Men's Christian Associations and Young Women's Christian Associations, inmates of hospitals and charitable and eleemosynary institutions, and persons exclusively engaged in charitable and eleemosynary work;

(n) indigent, destitute, and homeless persons, while being transported by charitable societies or hospitals, and necessary agents and employees in such transportation;

(o) school children, to and from public or parochial schools;

(p) military personnel going to or coming from institutions for their keeping;

(q) executive, judicial, or legislative officers of this state, including the members of the faculty of the different educational institutions of this state;

(r) the furloughed employees of common carriers authorized by 69-11-207 to issue free transportation and members of their families;

(s) persons who have become disabled or infirm in the service of a common carrier or members of families of persons who have become disabled or infirm in the service of any such common carrier;

(t) families of persons killed and surviving spouses who have not remarried and minor children during minority of persons who died while in the service of any such common carrier;

(u) witnesses attending any legal investigation in which such carrier is interested;

(v) the remains of persons who died while in the employment of a common carrier; and

(w) ex-employees traveling for the purpose of entering the service of any such common carrier.

(2) The provisions of this section and 69-11-207 shall not be construed to prohibit the interchange of passes for the persons to whom free tickets, free passes, or free transportation may be furnished or given under the provisions of this section. Nothing in this section or 69-11-207 shall be construed to invalidate any existing contract between a street railway company and a city where a condition of a franchise grant requires the furnishing of transportation to policemen, firefighters, and officers while in the performance of official duties.

History: Ap.p. Sec. 2, Ch. 136, L. 1911; re-en. Sec. 6573, R.C.M. 1921; amd. Sec. 1, Ch. 113, L. 1929; amd. Sec. 1, Ch. 78, L. 1933; re-en. Sec. 6573, R.C.M. 1935; amd. Sec. 35, Ch. 535, L. 1975; Sec. 72-617, R.C.M. 1947; Ap.p. Sec. 1, Ch. 9, L. 1929; re-en. Sec. 6573.1, R.C.M. 1935; amd. Sec. 36, Ch. 535, L. 1975; Sec. 72-618, R.C.M. 1947; R.C.M. 1947, 72-617(part), 72-618; amd. Sec. 16, Ch. 43, L. 1979.

69-11-209. Ejection of passengers. (1) A passenger who refuses to pay his fare or conform to any lawful regulation of the carrier may be ejected from the vehicle by the carrier. This must be done with as little violence as possible and at any usual stopping place or near some dwelling house.

(2) After having ejected a passenger, a carrier has no right to require the payment of any part of his fare.

History: (1)En. Sec. 2898, Civ. C. 1895; re-en. Sec. 5350, Rev. C. 1907; re-en. Sec. 7864, R.C.M. 1921; Cal. Civ. C. Sec. 2188; Based on Field Civ. C. Sec. 1151; re-en. Sec. 7864, R.C.M. 1935; Sec. 8-809, R.C.M. 1947; (2)En. Sec. 2899, Civ. C. 1895; re-en. Sec. 5351, Rev. C. 1907; re-en. Sec. 7865, R.C.M. 1921; Cal. Civ. C. Sec. 2190; Field Civ. C. Sec. 1152; re-en. Sec. 7865, R.C.M. 1935; Sec. 8-810, R.C.M. 1947; R.C.M. 1947, 8-809, 8-810.

Part 3

Carriers of Messages

69-11-301. Requirements for carriers of messages for reward. (1) A carrier of messages for reward, other than by telegraph or telephone, must deliver them at the place to which they are addressed or to the person for whom they are intended.

(2) Such carrier by telegraph or telephone must deliver them at such place and to such person provided the place of address or the person for whom they are intended is within a distance of 2 miles from the main office of the carrier in the city or town to which the messages are transmitted. The carrier is not required, in making the delivery, to pay on his route toll or ferriage, but for any distance beyond 1 mile from such office, compensation may be charged for a messenger employed by the carrier.

History: **En. Sec. 2860, Civ. C. 1895; re-en. Sec. 5330, Rev. C. 1907; re-en. Sec. 7844, R.C.M. 1921; Cal. Civ. C. Sec. 2161; re-en. Sec. 7844, R.C.M. 1935; R.C.M. 1947, 8-418.**

69-11-302. Order of transmission of messages. (1) A carrier of messages by telegraph or telephone must, if it is practicable, transmit every such message immediately upon its receipt. If this is not practicable and several messages accumulate upon his hands, he must transmit them in the following order:

(a) messages from public agents of the United States or of this state on public business;

(b) messages giving information relating to the sickness or death of any person;

(c) messages intended in good faith for immediate publication in newspapers and not for any secret use;

(d) other messages in the order in which they were received.

(2) A common carrier of messages, otherwise than by telegraph or telephone, must transmit them in the order in which he receives them, except messages from agents of the United States or of this state on public business, to which he must always give priority.

History: **(1)En. Sec. 2930, Civ. C. 1895; re-en. Sec. 5361, Rev. C. 1907; re-en. Sec. 7875, R.C.M. 1921; Cal. Civ. C. Sec. 2207; Based on Field Civ. C. Sec. 1164; re-en. Sec. 7875, R.C.M. 1935; Sec. 8-820, R.C.M. 1947; (2)En. Sec. 2931, Civ. C. 1895; re-en. Sec. 5362, Rev. C. 1907; re-en. Sec. 7876, R.C.M. 1921; Cal. Civ. C. Sec. 2208; Based on Field Civ. C. Sec. 1165; re-en. Sec. 7876, R.C.M. 1935; Sec. 8-821, R.C.M. 1947; R.C.M. 1947, 8-820, 8-821.**

69-11-303. Damages for refused or delayed message. Every person whose message is refused or postponed contrary to the provisions of this chapter is entitled to recover from the carrier his actual damages and $50 in addition thereto.

History: **En. Sec. 2932, Civ. C. 1895; re-en. Sec. 5363, Rev. C. 1907; re-en. Sec. 7877, R.C.M. 1921; Cal. Civ. C. Sec. 2209; Based on Field Civ. C. Sec. 1166; re-en. Sec. 7877, R.C.M. 1935; R.C.M. 1947, 8-822.**

69-11-304. Loss of valuable letters. A common carrier is not responsible for loss or miscarriage of a letter or package having the form of a letter containing money or notes, bills of exchange, or other papers of value unless he is informed at the time of its receipt of the value of its contents.

History: **En. Sec. 2879, Civ. C. 1895; re-en. Sec. 5341, Rev. C. 1907; re-en. Sec. 7855, R.C.M. 1921; Cal. Civ. C. Sec. 2177; re-en. Sec. 7855, R.C.M. 1935; R.C.M. 1947, 8-710.**

Part 4

Carriers of Property

69-11-401. General definitions. Property carried is called freight; the reward, if any, to be paid for its carriage is called freightage; the person who delivers the freight to the carrier is called the consignor; and the person to whom it is to be delivered is called the consignee.

History: En. Sec. 2800, Civ. C. 1895; re-en. Sec. 5305, Rev. C. 1907; re-en. Sec. 7820, R.C.M. 1921; Cal. Civ. C. Sec. 2114; Field Civ. C. Sec. 1098; re-en. Sec. 7820, R.C.M. 1935; R.C.M. 1947, 8-410.

69-11-402. Relationship of carrier to consignor and consignee. (1) A carrier must comply with the directions of the consignor or consignee to the same extent as an employee is bound to comply with those of his employer.

(2) When the directions of a consignor and consignee are conflicting, the carrier must comply with those of the consignor in respect to all matters except the delivery of the freight, as to which he must comply with the directions of the consignee, unless the consignor has specially forbidden the carrier to receive orders from the consignee inconsistent with his own.

History: (1)En. Sec. 2811, Civ. C. 1895; re-en. Sec. 5307, Rev. C. 1907; re-en. Sec. 7822, R.C.M. 1921; Cal. Civ. C. Sec. 2115; Field Civ. C. Sec. 1100; re-en. Sec. 7822, R.C.M. 1935; Sec. 8-412, R.C.M. 1947; (2)En. Sec. 2812, Civ. C. 1895; re-en. Sec. 5308, Rev. C. 1907; re-en. Sec. 7823, R.C.M. 1921; Cal. Civ. C. Sec. 2118; Field Civ. C. Sec. 1101; re-en. Sec. 7823, R.C.M. 1935; Sec. 8-413, R.C.M. 1947; R.C.M. 1947, 8-412, 8-413.

69-11-403. Acceptance of freight. A common carrier must, if able to do so, accept and carry whatever is offered to him, at a reasonable time and place, of a kind that he undertakes or is accustomed to carry.

History: En. Sec. 2871, Civ. C. 1895; re-en. Sec. 5333, Rev. C. 1907; re-en. Sec. 7847, R.C.M. 1921; Cal. Civ. C. Sec. 2169; Field Civ. C. Sec. 1135; re-en. Sec. 7847, R.C.M. 1935; R.C.M. 1947, 8-702.

69-11-404. Delivery of freight. (1) A carrier of property must deliver it to the consignee at the place to which it is addressed and in the manner usual at that place.

(2) If there is no usage to the contrary at the place of delivery, freight must be delivered as follows:

(a) If carried on a railway owned or managed by the carrier, it may be delivered at the station nearest to the place to which it is addressed.

(b) If carried by water, it may be delivered at a wharf or other suitable landing, at or within a reasonable distance from the place of address.

(c) In other cases, it must be delivered to the consignee or his agent, personally, if either can be found with reasonable diligence.

(3) If, for any reason, a carrier does not deliver freight to the consignee or his agent personally, he must give notice to the consignee of its arrival and keep the same in safety, upon his responsibility as a warehouseman, until the consignee has had a reasonable time to remove it. If the place of residence or business of the consignee be unknown to the carrier, he may give the notice by letter dropped in the nearest post office.

History: (1)En. Sec. 2813, Civ. C. 1895; re-en. Sec. 5309, Rev. C. 1907; re-en. Sec. 7824, R.C.M. 1921; Cal. Civ. C. Sec. 2118; Field Civ. C. Sec. 1103; re-en. Sec. 7824, R.C.M. 1935; Sec. 8-414,

R.C.M. 1947; (2)En. Sec. 2814, Civ. C. 1895; re-en. Sec. 5310, Rev. C. 1907; re-en. Sec. 7825, R.C.M. 1921; Cal. Civ. C. Sec. 2119; Based on Field Civ. C. Sec. 1104; re-en. Sec. 7825, R.C.M. 1935; Sec. 8-415, R.C.M. 1947; (3)En. Sec. 2815, Civ. C. 1895; re-en. Sec. 5311, Rev. C. 1907; re-en. Sec. 7826, R.C.M. 1921; Cal. Civ. C. Sec. 2120; Based on Field Civ. C. Sec. 1105; re-en. Sec. 7826, R.C.M. 1935; R.C.M. 1947, 8-414, 8-415, 8-416.

69-11-405. Procedure to terminate carrier's liability. If a consignee does not accept and remove freight within a reasonable time after the carrier has fulfilled his obligation to deliver or duly offered to fulfill the same, the carrier may exonerate himself from further liability by placing the freight in a suitable warehouse on storage, on account of the consignee, and giving notice thereof to him.

History: En. Sec. 2816, Civ. C. 1895; re-en. Sec. 5312, Rev. C. 1907; re-en. Sec. 7827, R.C.M. 1921; Cal. Civ. C. Sec. 2121; Field Civ. C. Sec. 1106; re-en. Sec. 7827, R.C.M. 1935; R.C.M. 1947, 8-417.

69-11-406. Payment of freightage. (1) A carrier may require his freightage to be paid upon his receiving the freight, but if he does not demand it then, he cannot until he is ready to deliver the freight to the consignee.

(2) The consignor of freight is presumed to be liable for the freightage, but if the contract between him and the carrier provides that the consignee shall pay it and the carrier allows the consignee to take the freight, he cannot afterwards recover the freightage from the consignor.

(3) The consignee of freight is liable for the freightage if he accepts the freight with notice of the intention of the consignor that he should pay it.

History: (1)En. Sec. 2840, Civ. C. 1895; re-en. Sec. 5321, Rev. C. 1907; re-en. Sec. 7835, R.C.M. 1921; Field Civ. C. Sec. 1115; re-en. Sec. 7835, R.C.M. 1935; Sec. 8-601, R.C.M. 1947; (2)En. Sec. 2841, Civ. C. 1895; re-en. Sec. 5322, Rev. C. 1907; re-en. Sec. 7836, R.C.M. 1921; Cal. Civ. C. Sec. 2137; Field Civ. C. Sec. 1116; re-en. Sec. 7836, R.C.M. 1935; Sec. 8-602, R.C.M. 1947; (3)En. Sec. 2842, Civ. C. 1895; re-en. Sec. 5323, Rev. C. 1907; re-en. Sec. 7837, R.C.M. 1921; Cal. Civ. C. Sec. 2138; Field Civ. C. Sec. 1117; re-en. Sec. 7837, R.C.M. 1935; Sec. 8-603, R.C.M. 1947; R.C.M. 1947, 8-601, 8-602, 8-603.

69-11-407. Natural increase of freight. No freightage can be charged upon the natural increase of freight.

History: En. Sec. 2843, Civ. C. 1895; re-en. Sec. 5324, Rev. C. 1907; re-en. Sec. 7838, R.C.M. 1921; Cal. Civ. C. Sec. 2139; Field Civ. C. Sec. 1118; re-en. Sec. 7838, R.C.M. 1935; R.C.M. 1947, 8-604.

69-11-408. Apportionment of freightage by contract. (1) If freightage is apportioned by a bill of lading or other contract made between a consignor and carrier, the carrier is entitled to payment, according to the apportionment, for so much as he delivers.

(2) If a part of the freight is accepted by a consignee without a specific objection that the rest is not delivered, the freightage must be apportioned and paid as to that part, though not apportioned in the original contract.

History: (1)En. Sec. 2844, Civ. C. 1895; re-en. Sec. 5325, Rev. C. 1907; re-en. Sec. 7839, R.C.M. 1921; Cal. Civ. C. Sec. 2140; Field Civ. C. Sec. 1119; re-en. Sec. 7839, R.C.M. 1935; Sec. 8-605, R.C.M. 1947; (2)En. Sec. 2845, Civ. C. 1895; re-en. Sec. 5326, Rev. C. 1907; re-en. Sec. 7840, R.C.M. 1921; Cal. Civ. C. Sec. 2141; Field Civ. C. Sec. 1120; re-en. Sec. 7840, R.C.M. 1935; Sec. 8-606, R.C.M. 1947; R.C.M. 1947, 8-605, 8-606.

69-11-409. Adjustment of freightage for change in time or place of delivery. (1) If a consignee voluntarily receives freight at a place short of the one appointed for delivery, the carrier is entitled to a just proportion of the freightage according to distance. If the carrier, being ready and willing, offers to complete the transit, he is entitled to the full freightage. If he does not thus offer completion and the consignee receive the freight only from necessity, the carrier is not entitled to any freightage.

(2) If freight is carried further or more expeditiously than was agreed upon by the parties, the carrier is not entitled to additional compensation and cannot refuse to deliver it, on demand of the consignee, at the place and time of its arrival.

History: (1)En. Sec. 2846, Civ. C. 1895; re-en. Sec. 5327, Rev. C. 1907; re-en. Sec. 7841, R.C.M. 1921; Cal. Civ. C. Sec. 2142; Field Civ. C. Sec. 1121; re-en. Sec. 7841, R.C.M. 1935; Sec. 8-607, R.C.M. 1947; (2)En. Sec. 2847, Civ. C. 1895; re-en. Sec. 5328, Rev. C. 1907; re-en. Sec. 7842, R.C.M. 1921; Cal. Civ. C. Sec. 2143; Field Civ. C. Sec. 1122; re-en. Sec. 7842, R.C.M. 1935; Sec. 8-608, R.C.M. 1947; R.C.M. 1947, 8-607, 8-608.

69-11-410. Carrier's lien for freightage. A carrier has a lien for freightage, which is regulated by the law on liens.

History: En. Sec. 2848, Civ. C. 1895; re-en. Sec. 5329, Rev. C. 1907; re-en. Sec. 7843, R.C.M. 1921; Cal. Civ. C. Sec. 2144; Field Civ. C. Sec. 1123; re-en. Sec. 7843, R.C.M. 1935; R.C.M. 1947, 8-609.

69-11-411. Sale of perishable property for freightage. If, from any cause other than want of ordinary care and diligence on his part, a common carrier is unable to deliver perishable property transported by him and collect his charges thereon, he may cause the property to be sold in open market to satisfy his lien for freightage.

History: En. Sec. 2917, Civ. C. 1895; re-en. Sec. 5360, Rev. C. 1907; re-en. Sec. 7874, R.C.M. 1921; Cal. Civ. C. Sec. 2204; re-en. Sec. 7874, R.C.M. 1935; R.C.M. 1947, 8-819.

69-11-412. Division of joint rates among carriers. (1) Whenever the commission shall have established a joint rate for the transportation of freight carried over two or more connecting lines of railroad, railway, or common carrier, the railroads, railways, or common carriers affected by such joint rate may, by agreement, provide for the distribution thereof between themselves.

(2) In the event that the railroads, railways, or common carriers affected by such rates shall fail to agree upon the distribution of such rate for a period of 60 days after the order fixing and determining such joint rate shall have been made by the commission, then the commission shall have power and it is hereby made its duty to call a hearing, of which hearing the railroads, railways, or common carriers affected by such joint rate shall have at least 20 days' notice, and upon such hearing the commission shall proceed to fix and determine the pro rata distribution of such joint rate between the railroads, railways, or common carriers affected thereby.

(3) Any railroad, railway company, or common carrier and its officers or agents who shall refuse or fail to comply with any order or rule relative to this section made by the commission shall be subject to a fine of not less than $25 or more than $50. Each day of such refusal or failure shall be deemed a separate offense and shall be subject to the penalty herein prescribed, such fine to be recovered in a civil action upon complaint of the commission in any court of competent jurisdiction.

History: (1), (2)En. Sec. 2, Ch. 105, L. 1913; re-en. Sec. 3836, R.C.M. 1921; re-en. Sec. 3836, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; Sec. 72-158, R.C.M. 1947; (3)En. Sec. 7, Ch. 105, L.

1913; re-en. Sec. 3841, R.C.M. 1921; re-en. Sec. 3841, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; Sec. 72-163, R.C.M. 1947; R.C.M. 1947, 72-158, 72-163(part).

69-11-413 through 69-11-420 reserved.

69-11-421. Liability of inland carriers for loss. (1) Any common carrier, railroad, or transportation company subject to the provisions of 69-11-421 through 69-11-427, receiving property for transportation from a point in Montana to any other point in Montana, shall issue a receipt or bill of lading therefor and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the state when transported on a through bill of lading. No contract, receipt, rule, or other limitation of any character whatsoever shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed.

(2) Except as provided in 69-11-422, any common carrier, railroad, or transportation company receiving property for transportation from a point in Montana to a point in Montana or any common carrier, railroad, or transportation company delivering property so received and transported is liable to the lawful holder of said receipt or bill of lading or to any party entitled to recover thereon, whether such receipt or bill of lading has been issued or not, for the full actual loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the state when transported on a through bill of lading, notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to value in any such receipt or bill of lading or in any contract or rule or in any tariff filed with the public service commission. Any such limitation, without respect to the manner or form in which it is sought to be made, is unlawful and void, except:

(a) an inherent defect, vice, or weakness or a spontaneous action of the property itself;

(b) the act of a public enemy of the United States or of this state;

(c) the act of the law;

(d) an irresistible superhuman cause;

(e) the act or default of the shipper or owner; or

(f) for natural shrinkage.

(3) Nothing in 69-11-421 through 69-11-426 deprives any holder of such receipt or bill of lading of any remedy or right of action.

(4) The liability imposed by this section also applies in the case of property reconsigned or diverted in accordance with the applicable tariffs filed as provided in this part.

(5) A common carrier is liable, even in the cases excepted by subsection (2), if his ordinary negligence exposes the property to the cause of the loss.

History: (1) thru (4)En. 8-812.1 by Sec. 1, Ch. 168, L. 1975; Sec. 8-812.1, R.C.M. 1947; (5)En. Sec. 2911, Civ. C. 1895; re-en. Sec. 5354, Rev. C. 1907; re-en. Sec. 7868, R.C.M. 1921; Cal. Civ. C. Sec. 2195; Field Civ. C. Sec. 1155; re-en. Sec. 7868, R.C.M. 1935; Sec. 8-813, R.C.M. 1947; R.C.M. 1947, 8-812.1(part), 8-813; amd. Sec. 17, Ch. 43, L. 1979.

69-11-422. Permissible limitations on liability. (1) The provisions of 69-11-421 respecting liability for full actual loss, damage, or injury, notwithstanding any limitation of liability or recovery or representation or agreement or release as to value, and declaring any such limitation to be unlawful and void shall not apply to:

(a) baggage carried on passenger trains or buses;

(b) property, except ordinary livestock, received for transportation, concerning which the carrier shall have been or shall hereafter be expressly authorized or required by order of the public service commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property.

(2) (a) In the case listed in subsection (1)(b), such declaration or agreement shall have no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released and shall not, so far as related to values, be held to be a violation of 69-11-421 through 69-11-427. Any tariff schedule which may be filed with the commission pursuant to the order referred to in subsection (1)(b) shall contain specific reference thereto and may establish rates varying with the value so declared and agreed upon. The commission is hereby empowered to make such order in cases where rates dependent upon and varying with declared or agreed values would, in its opinion, be just and reasonable under the circumstances and conditions surrounding the transportation.

(b) The term "ordinary livestock" shall include all cattle, swine, sheep, goats, horses, and mules, except such as are chiefly valuable for breeding, racing, show purposes, or other special uses.

History: **En. 8-812.1 by Sec. 1, Ch. 168, L. 1975; R.C.M. 1947, 8-812.1(part).**

69-11-423. Meaning of delivering carrier. For the purpose of 69-11-421 through 69-11-427, the delivering carrier shall be construed to be the carrier performing the linehaul service nearest to the point of destination.

History: **En. 8-812.1 by Sec. 1, Ch. 168, L. 1975; R.C.M. 1947, 8-812.1(part).**

69-11-424. Examination of shipment. (1) The consignee within 15 days after delivery must ask for an inspection of any damaged shipment, and the carrier must make an inspection within 5 working days thereafter.

(2) The consignee shall have the opportunity to examine the condition of the package in which the goods are shipped prior to signing the delivery receipt.

(3) The consignee may detain the driver at consignee's expense, not to exceed a minimum charge to be fixed by the commission, while he examines the shipment for possible concealed damage. During such examination, the freight bill may still be noted as to the extent of the damage or loss, if any. If examination discloses damage, the examination charge may be included in the consignee's claim for damage in proportion to the amount of the claim.

History: **En. 8-812.1 by Sec. 1, Ch. 168, L. 1975; R.C.M. 1947, 8-812.1(part).**

69-11-425. Period in which to file claims. It shall be unlawful for any such receiving or delivering common carrier to provide, by rule, contract, or otherwise, a shorter period for the filing of claims than 9 months and for the institution of suits than 2 years, such period for institution of suits to be computed from the date when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice.

History: En. 8-812.1 by Sec. 1, Ch. 168, L. 1975; R.C.M. 1947, 8-812.1(part).

69-11-426. Processing of claims for damage. (1) Carriers must acknowledge receipt of each claim within 30 days and promptly investigate each claim and either pay or decline the claim within 120 days from the date of receipt thereof or provide an explanation for the delay in disposition. An assertion that the claim is still being investigated shall not constitute sufficient explanation.

(2) In the event a claimant or a carrier successfully prosecutes or defends a claim for loss or damage under 69-11-421 through 69-11-426, wherein it is alleged the carrier has not disposed of the claim within 120 days or explained the delay and the claimant has inquired of the carrier regarding the delay, in writing, within the 120-day period, then the court exercising jurisdiction may, at its discretion, award reasonable attorney fees to the successful party, but not to exceed $500.

History: En. 8-812.1 by Sec. 1, Ch. 168, L. 1975; R.C.M. 1947, 8-812.1(part).

69-11-427. Liability between carriers. The common carrier, railroad, or transportation company issuing such receipt or bill of lading or delivering such property so received and so transported shall be entitled to recover, from the common carrier, railroad, or transportation company on whose line the loss, damage, or injury shall have been sustained, the amount of such loss, damage, or injury as it may be required to pay to the owners of such property, as may be evidenced by any receipt, judgment, or transcript thereof, and the amount of any expense reasonably incurred by it in defending any action at law brought by the owners of such property.

History: En. 8-812.2 by Sec. 2, Ch. 168, L. 1975; R.C.M. 1947, 8-812.2.

69-11-428. Liability for delay. A common carrier is liable for delay only when it is caused by his want of ordinary care and diligence.

History: En. Sec. 2912, Civ. C. 1895; re-en. Sec. 5355, Rev. C. 1907; re-en. Sec. 7869, R.C.M. 1921; Cal. Civ. C. Sec. 2196; Field Civ. C. Sec. 1156; re-en. Sec. 7869, R.C.M. 1935; R.C.M. 1947, 8-814.

69-11-429. Liability for valuable cargo. A common carrier of gold, silver, platina, or precious stones or of imitations thereof in a manufactured or unmanufactured state; of timepieces of any description; of negotiable paper or other valuable writings; of pictures, glass, or chinaware; of statuary, silk, or laces; or of plated ware of any kind is not liable for more than $50 upon the loss or injury of any one package of such articles unless he has notice upon his receipt thereof by mark upon the package or otherwise of the nature of the freight; nor is such carrier liable upon any package carried for more than the value of the articles named in the receipt or the bill of lading.

History: En. Sec. 2913, Civ. C. 1895; re-en. Sec. 5356, Rev. C. 1907; re-en. Sec. 7870, R.C.M. 1921; Cal. Civ. C. Sec. 2200; Field Civ. C. Sec. 1160; re-en. Sec. 7870, R.C.M. 1935; R.C.M. 1947, 8-815.

CHAPTER 12

MOTOR CARRIERS

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Chapter Compiler's Comments

Interim Study: HJR 27 and HJR 33 (1981) requested an interim study of transportation in Montana. The Legislative Council designated the Joint Subcommittee on Transportation to conduct the study.

Part 1

General Provisions

69-12-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Between fixed termini" or "over a regular route" means the termini or route between or over which a motor carrier usually or ordinarily operates motor vehicles, even though there may be periodical or irregular departures from the termini or route.

(2) "Certificate" means the certificate of public convenience and necessity issued under this chapter.

(3) "Compensation" means the charge imposed on motor carriers for the use of the highways in this state by motor carriers under 69-12-421.

(4) "Corporation" means a corporation, company, association, or joint-stock association.

(5) "For hire" means for remuneration of any kind, paid or promised, either directly or indirectly, or received or obtained through leasing, brokering, or buy-and-sell arrangements from which a remuneration is obtained or derived for transportation service.

(6) "Motor carrier" means a person or corporation, or its lessees, trustees, or receivers appointed by any court, operating motor vehicles upon any public highway in this state for the transportation of persons or property for hire on a commercial basis, either as a common carrier or under private contract, agreement, charter, or undertaking. The term includes any motor carrier serving the public in the business of transportation of ashes, trash, waste, refuse, rubbish, garbage, and organic and inorganic matter.

(7) "Motor vehicle" includes vehicles or machines, motor trucks, tractors, or other self-propelled vehicles used for the transportation of property or persons over the public highways of the state.

(8) "Person" means an individual, firm, or partnership.

(9) "Public highway" means a public street, road, highway, or way in this state.

(10) "Railroad" means the movement of cars on rails, regardless of the motive power used.

History: En. Sec. 1, Ch. 184, L. 1931; re-en. Sec. 3847.1, R.C.M. 1935; amd. Sec. 1, Ch. 153, L. 1943; amd. Sec. 1, Ch. 262, L. 1947; amd. Sec. 1, Ch. 204, L. 1963; amd. Sec. 1, Ch. 190, L. 1969; amd. Sec. 1, Ch. 275, L. 1971; amd. Sec. l, Ch. 168, L. 1973; amd. Sec. 1, Ch. 174, L. 1973; amd. Sec. 1, Ch. 315, L. 1974; amd. Sec. 1, Ch. 66, L. 1975; amd. Sec. 1, Ch. 139, L. 1977; R.C.M. 1947, 8-101(part); amd. Sec. 18, Ch. 43, L. 1979.

69-12-102. Scope of chapter — exemptions. (1) Except as provided in 69-12-201(1)(f), this chapter does not affect:

(a) motor vehicles used in carrying property consisting of agricultural commodities (not including manufactured products thereof) if the motor vehicles are not used in carrying other property or passengers for compensation;

(b) the operation of school buses which are used in conveying pupils or other students enrolled in classes to and from district or other schools or in transportation movements related to school activities which are sponsored or supervised by school authorities;

(c) the transportation by means of motor vehicles in the regular course of business of employees, supplies, and materials by a person or corporation engaged exclusively in the construction or maintenance of highways or engaged exclusively in logging or mining operations, insofar as the use of employees, supplies, and materials in construction and production is concerned;

(d) the transportation of property by motor vehicle in a city, town, or village with a population of less than 500 persons according to the latest United States census or in the commercial areas thereof, as determined by the commission;

(e) the transportation of newspapers, newspaper supplements, periodicals, or magazines;

(f) tow trucks and wreckers designed and exclusively used in towing abandoned, wrecked, or disabled vehicles or while these tow trucks and wreckers are rendering assistance to abandoned, wrecked, or disabled vehicles;

(g) motor vehicles used exclusively in carrying junk vehicles from a collection point to a motor vehicle wrecking facility or a motor vehicle graveyard;

(h) ambulances; or

(i) the transportation of pit run or processed sand and gravel, concrete mix, aggregate, plant mix asphalt pavement, aggregate mix, dirt, rock, material from demolished buildings and structures, used paving materials, used concrete, broken concrete, riprap, and other forms and types of materials transported solely for the purpose of excavation or fill.

(2) This chapter does not prevent bona fide leases, brokerage agreements, or buy-and-sell agreements.

History: En. Sec. 1, Ch. 184, L. 1931; re-en. Sec. 3847.1, R.C.M. 1935; amd. Sec. 1, Ch. 153, L. 1943; amd. Sec. 1, Ch. 262, L. 1947; amd. Sec. 1, Ch. 204, L. 1963; amd. Sec. 1, Ch. 190, L. 1969;

amd. Sec. 1, Ch. 275, L. 1971; amd. Sec. 1, Ch. 168, L. 1973; amd. Sec. 1, Ch. 174, L. 1973; amd. Sec. 1, Ch. 315, L. 1974; amd. Sec. 1, Ch. 66, L. 1975; amd. Sec. 1, Ch. 139, L. 1977; R.C.M. 1947, 8-101(part); amd. Sec. 1, Ch. 514, L. 1979; amd. Sec. 1, Ch. 227, L. 1981.

Compiler's Comments

1981 Amendment: Added "Except as provided in 69-12-201(1)(f)" at the beginning of (1).

Effective Date: Section 2, Ch. 514, L. 1979, provided: "This act is effective on passage and approval." Approved April 9, 1979.

69-12-103. Provision for interstate or international carriers. (1) (a) Except as provided in subsection (1)(b), the terms and provisions of this chapter shall apply to commerce with foreign nations and to commerce among the several states of this Union, insofar as such application may be permitted under the provisions of the constitution of the United States, treaties made thereunder, and the acts of congress. The commission is hereby authorized to exercise any additional power that may from time to time be conferred upon the state by any act of congress.

(b) It shall not be necessary for an interstate or international motor carrier, in order to obtain a permit as herein provided, to make any showing of public convenience and necessity except as to the transportation of passengers and/or freight between points within this state; the power to regulate such operation being specifically reserved herein. Any motor carrier operating in and about any national park whose rates and methods of accounting are controlled by contract with the United States shall not be subject to any regulation by the commission in conflict with such contract or in conflict with any regulation by the United States made pursuant to such contract or made pursuant to an act of congress of the United States.

(2) When transportation service is rendered partly in this state and partly in an adjoining state or foreign country, motor carriers shall comply with the provisions of this chapter relating to the payment of compensation and to the making of annual or special reports or statements herein required and shall show the total business performed within the limits of this state and such other information concerning its operation within this state as may be required by the commission, as fully and completely and in the same manner as herein required of motor carriers operating wholly within this state.

History: (1)En. Sec. 23, Ch. 184, L. 1931; re-en. Sec. 3847.23, R.C.M. 1935; Sec. 8-123, R.C.M. 1947; (2)En. Sec. 16, Ch. 184, L. 1931; re-en. Sec. 3847.16, R.C.M. 1935; amd. Sec. 1, Ch. 473, L. 1973; Sec. 8-116, R.C.M. 1947; R.C.M. 1947, 8-116(b), 8-123.

69-12-104. Determination of operation between fixed termini or over a regular route. Whether or not a motor vehicle is operated by a motor carrier between fixed termini or over a regular route or otherwise under this chapter is a question of fact to be determined by the commission.

History: En. Sec. 1, Ch. 184, L. 1931; re-en. Sec. 3847.1, R.C.M. 1935; amd. Sec. 1, Ch. 153, L. 1943; amd. Sec. 1, Ch. 262, L. 1947; amd. Sec. 1, Ch. 204, L. 1963; amd. Sec. 1, Ch. 190, L. 1969; amd. Sec. 1, Ch. 275, L. 1971; amd. Sec. 1, Ch. 168, L. 1973; amd. Sec. 1, Ch. 174, L. 1973; amd. Sec. 1, Ch. 315, L. 1974; amd. Sec. 1, Ch. 66, L. 1975; amd. Sec. 1, Ch. 139, L. 1977; R.C.M. 1947, 8-101(part).

69-12-105. Nature of accommodative transportation. An accommodative transportation movement by a person not in the transportation business is not a service for hire even though the persons owning the property transported or persons transported share in the cost or pay for the movement.

History: En. Sec. 1, Ch. 184, L. 1931; re-en. Sec. 3847.1, R.C.M. 1935; amd. Sec. 1, Ch. 153, L. 1943; amd. Sec. 1, Ch. 262, L. 1947; amd. Sec. 1, Ch. 204, L. 1963; amd. Sec. 1, Ch. 190, L. 1969;

amd. Sec. 1, Ch. 275, L. 1971; amd. Sec. l, Ch. 168, L. 1973; amd. Sec. 1, Ch. 174, L. 1973; amd. Sec. 1, Ch. 315, L. 1974; amd. Sec. 1, Ch. 66, L. 1975; amd. Sec. 1, Ch. 139, L. 1977; R.C.M. 1947, 8-101(part).

69-12-106. Acts indicative of status as motor carrier. Any person or corporation maintaining a public motor vehicle stand or by sign, symbol, or device or vehicle or clothing or by advertisement holding forth transportation for compensation or soliciting the transportation of persons or property for compensation among the public or soliciting for trips for compensation or providing transportation service to the public under the guise of leasing or buy-and-sell arrangements shall be deemed, prima facie, a "motor carrier" subject to this chapter. The burden of proof shall be on such person or corporation to disprove such status.

History: En. Sec. 21, Ch. 184, L. 1931; re-en. Sec. 3847.21, R.C.M. 1935; amd. Sec. 3, Ch. 204, L. 1963; R.C.M. 1947, 8-121.

69-12-107. Status of private carriers under motor carrier laws. Nothing in this chapter shall be construed as converting or attempting to convert a private carrier into a common carrier. It is hereby declared that this chapter is intended primarily as a regulation of the public highways of the state.

History: En. Sec. 22, Ch. 184, L. 1931; re-en. Sec. 3847.22, R.C.M. 1935; R.C.M. 1947, 8-122.

69-12-108. Violations. Any motor carrier subject to the provisions of this chapter, as amended, or whenever any such motor carrier is a corporation, any director or officer thereof; any receiver, trustee, lessee, agent, or person acting for or employed by such corporation; any person, corporation, or association or officer, agent, or employee thereof; or any broker of property or officer, agent, or employee thereof who violates or fails to comply with or who procures, aids, or abets in the violation of any provision of this chapter, as amended, or who fails to obey, observe, or comply with any lawful order, decision, rule, direction, demand, or requirement of the commission or any part of the provisions thereof is:

(1) subject to a civil penalty, to be collected and deposited to the general fund by the commission after notice and hearing, in an amount not less than $25 or more than $500 for the first offense and not less than $25 or more than $1,000 for each subsequent offense; or

(2) subject, upon conviction in a justice's court, to a fine of not less than $25 or more than $500 for the first offense and not less than $25 or more than $1,000 for each subsequent offense.

History: En. Sec. 19, Ch. 184, L. 1931; re-en. Sec. 3847.19, R.C.M. 1935; amd. Sec. 2, Ch. 204, L. 1963; amd. Sec. 1, Ch. 209, L. 1967; amd. Sec. 1, Ch. 68, L. 1971; amd. Sec. 1, Ch. 282, L. 1977; R.C.M. 1947, 8-119; amd. Sec. 19, Ch. 43, L. 1979; amd. Sec. 1, Ch. 330, L. 1979.

Part 2

Role of Commission

69-12-201. Supervision and regulation of motor carriers and other motor vehicles used in commerce. (1) The commission is hereby vested with power and authority and it is hereby made its duty to:

(a) supervise and regulate every motor carrier in this state;

(b) fix, alter, regulate, and determine specific, just, reasonable, equal, nondiscriminatory, and sufficient rates, fares, charges, and classifications for Class A and Class B motor carriers;

(c) regulate the properties, facilities, operations, accounts, service, practices, affairs, and safety of operations of all motor carriers, each of which is considered to consent impliedly to reasonable safety inspections of its motor vehicles utilized in furtherance of its business as a motor carrier;

(d) require the filing of annual and other reports, tariffs, schedules, or other data by such motor carriers;

(e) supervise and regulate motor carriers in all matters affecting the relationship between such motor carriers and the traveling and shipping public;

(f) provide standards for the safe operation of all motor vehicles used in commerce that exceed 26,000 pounds gross vehicle weight, except farm vehicles; and

(g) provide standards for the safe operation of vehicles of less than 26,000 pounds gross vehicle weight if they are:

(i) being used to transport passengers for hire; or

(ii) being used to transport hazardous materials of a type or quantity that requires the vehicle to be marked or placarded in accordance with rules adopted by the commission.

(2) Such standards of safety shall be the same as prescribed for motor carriers, and the same inspection standards and procedures shall apply. However, standards relating to drivers, other than drivers for motor carriers, do not apply to a vehicle operated exclusively within a 200-mile radius of its work reporting location.

(3) The commission shall have power and authority by general order or otherwise to prescribe rules in conformity with this chapter and applicable to any and all motor carriers.

(4) The commission also may fix and determine reasonable maximum or minimum rates for the operations of any Class C motor carrier when the same are required for the best interests of public transportation.

History: (1)(a) thru (1)(e), (3)En. Sec. 3, Ch. 184, L. 1931; re-en. Sec. 3847.2, R.C.M. 1935; amd. Sec. 1, Ch. 205, L. 1963; amd. Sec. 1, Ch. 182, L. 1971; amd. Sec. 20, Ch. 315, L. 1974; Sec. 8-103, R.C.M. 1947; (1)(f), (1)(g), (2)En. Sec. 2, Ch. 227, L. 1981; (4)En. Sec. 1, Ch. 201, L. 1961; Sec. 8-104.1, R.C.M. 1947; R.C.M. 1947, 8-103(part), 8-104.1; amd. Sec. 3, Ch. 226, L. 1981; amd. Sec. 2, Ch. 227, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 226 added the last clause in (1)(c) after "all motor carriers" relating to implied consent for safety inspections.

Chapter 227 added subsections (1)(f), (1)(g), and (2), relating to safety standards.

Code Commissioner Changes: The Code Commissioner added "provide standards for the safe operation of" at the beginning of (1)(g) and divided the material inserted by Ch. 227 into three subsections, (1)(f), (1)(g), and (2), for clarification and renumbered former subsections (2) and (3) as (3) and (4).

1981 Statement of Intent: The statement of intent attached to HB 749 (Ch. 227, L. 1981) provided: "A statement of intent is required for this bill because it grants the Public Service Commission the authority to provide safety standards for motor vehicles used in commerce.

All interstate motor carriers, interstate private carriers, and carriers hauling unregulated commodities in interstate commerce must now meet equipment safety requirements and inspections as established by the Federal Motor Carrier Safety Regulations of the Department of Transportation. In addition, regulated intrastate motor carriers must also meet the same safety standards.

The Legislature intends to include large over-the-road trucks, in excess of 26,000 pounds GVW, used in commerce operating on Montana's highways to adhere to safety equipment standards. It is the intent of the Legislature to establish by regulation uniform safety standards and a safety inspection program that will focus on mechanical factors most often blamed for accidents involving trucks, passenger carriers, and hazardous material transporters. Included would be detailed inspections of brakes, steering components, tires, and driver logs where required.

It is intended that rules promulgated by PSC incorporate the "Critical Item Truck Inspection" program and that the rules include a procedure for conducting the inspection program as well as providing for a vehicle identification program acknowledging the inspection. The rules shall provide that safety infractions posing no imminent threat to public safety shall not result in an "out of service" order. Such a vehicle shall be allowed to proceed to obtain repairs before final inspection and issuance of inspection acknowledgment. It is recognized that repairing or parking large over-the-road trucks on the roadway is extremely dangerous."

1979 Statement of Intent: The statement of intent attached to SB 473 (Ch. 387, L. 1979), provided: "A statement of intent is required for this bill because it creates the necessity for the adoption of additional rules under the rulemaking authority granted by 69-12-201 to carry out the amendments to 69-12-314 and 69-12-407.

It is the intent of the legislature that the Public Service Commission has the authority to make rules defining what activities will be necessary to constitute the transportation of material allowed under a Class D motor carrier certificate "on a regular basis as part of the motor carrier's usual business operation." Thus the Public Service Commission may by rule establish the criteria by which "regular basis" is measured and may make rules describing how "part of the motor carrier's usual business operation" is to be interpreted in implementing the amendment to 69-12-314.

To implement the amendments to 69-12-407 regarding records and reports by Class D motor carriers, the Public Service Commission may amend the present rules governing the reports and records of Class A and Class B motor carriers to include Class D motor carriers. In addition, the Public Service Commission may by rule determine what will be "sufficient information" to show that a motor carrier is entitled to a Class D certificate and how the information is to be provided by the Class D motor certificate holder."

69-12-202. Encouragement of common carrier motor transportation. To fully secure adequate motor transportation facilities for all users of such service and to secure the public advantages thereof, the commission shall encourage a system of common carrier motor transportation within the state for the convenience of the shipping public. The maintenance of a common carrier motor transportation system within Montana is hereby declared to be a public purpose.

History: En. Sec. 3, Ch. 184, L. 1931; re-en. Sec. 3847.2, R.C.M. 1935; amd. Sec. 1, Ch. 205, L. 1963; amd. Sec. 1, Ch. 182, L. 1971; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-103(part).

69-12-203. Supervisor of motor carriers. (1) The commission shall appoint a supervisor of motor carriers who shall have general responsibility to the commission for enforcement of the provisions of this chapter. The supervisor shall be either an attorney admitted to practice law in Montana or a person qualified by at least 5 years of suitable experience and training in appropriate phases of the motor carrier industry. He shall serve at the pleasure of the commission and at an annual salary to be set by the commission.

(2) The supervisor shall direct all enforcement activities in behalf of the commission, including the investigation and prosecution of violations of this chapter, as amended, or the rules or orders prescribed thereunder by the commission.

(3) The supervisor and whatever field inspectors may be employed by the commission to assist him shall be deemed peace officers for the purpose of making arrests in connection with violations of this chapter, as amended, and issuing summonses, accepting bail, and serving warrants of arrest. The supervisor and field inspectors are empowered to make reasonable inspections of cargoes carried by commercial motor vehicles, make reasonable safety inspections of commercial motor vehicles utilized by motor carriers, and require

production of manifests, bills of lading, leases, and other documents relating to the cargo, driver, routing, or ownership of such vehicles. The scope of the inspections is limited to the enforcement of the provisions of Title 69, chapter 12.

History: En. Sec. 3, Ch. 184, L. 1931; re-en. Sec. 3847.2, R.C.M. 1935; amd. Sec. 1, Ch. 205, L. 1963; amd. Sec. 1, Ch. 182, L. 1971; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-103(b); amd. Sec. 20, Ch. 43, L. 1979; amd. Sec. 1, Ch. 331, L. 1979; amd. Sec. 4, Ch. 226, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "make reasonable safety inspections of commercial motor vehicles utilized by motor carriers" after "make reasonable inspections of cargoes carried by commercial motor vehicles" in (3).

69-12-204. General administrative procedure. Insofar as possible and applicable, the provisions of statutes prescribing the procedure before the commission in cases involving rates, facilities, service, or other affairs of railroads in this state, including forms of applications, complaints, answers, orders, and notices of hearing; the conducting of hearings; compelling the attendance and testimony of witnesses and the production of records, data, and information; and the preparation, recording, and serving of reports and orders of the commission, shall be followed and shall govern in all proceedings and investigations before the commission in cases arising in connection with the performance by the commission of its duties or the exercise of its jurisdiction under the provisions of this chapter.

History: En. Sec. 14, Ch. 184, L. 1931; re-en. Sec. 3847.14, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-114(part).

69-12-205. Rules to reflect differences between carrier classes. All rules in relation to schedules, service, tariffs, rates, facilities, accounts, and reports shall have due regard for the differences existing between Class A, Class B, Class C, and Class D motor carriers, as herein defined, and shall be just, fair, and reasonable to the said classes of motor carriers in their relations to each other and to the public. In fixing the tariff or rates to be charged by Class A and Class B motor carriers for the carrying of persons and/or property, the commission shall take into consideration the kind and character of service to be performed, the public necessity therefor, and the effect of such tariff and rates upon other transportation agencies, if any, and shall, as far as possible, avoid detrimental or unreasonable competition with existing railroad service or service furnished by a motor carrier.

History: En. Sec. 3, Ch. 184, L. 1931; re-en. Sec. 3847.2, R.C.M. 1935; amd. Sec. 1, Ch. 205, L. 1963; amd. Sec. 1, Ch. 182, L. 1971; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-103(c); amd. Sec. 1, Ch. 352, L. 1979.

69-12-206. Investigations by commission. (1) Any investigation, inquiry, or hearing which the commission has power to undertake or to hold under the provisions of this chapter may be undertaken or held by or before any member of the commission or by and before any agent or examiner of the commission designated for the purpose by the commission. Every finding, order, or decision made by a member of the commission or agent or examiner of the commission so designated, together with a statement in writing of the reasons therefor (which statement must be included in the finding, order, or decision, pursuant to the investigation, inquiry, or hearing) when approved and confirmed by the commission and ordered filed in its office shall be considered the finding, order, or decision of the commission.

(2) An agent or examiner of the commission designated as aforesaid may administer oaths, examine witnesses, and receive evidence.

History: **En. Sec. 11, Ch. 184, L. 1931; re-en. Sec. 3847.11, R.C.M. 1935; amd. Sec. 1, Ch. 101, L. 1955; amd. Sec. 2, Ch. 69, L. 1971; amd. Sec. 1, Ch. 339, L. 1973; amd. Sec. 4, Ch. 243, L. 1974; amd. Sec. 3, Ch. 315, L. 1974; R.C.M. 1947, 8-111(2).**

69-12-207. Temporary operating authority. (1) To enable the provision of service for which there is an immediate and urgent need to a point or points or within a territory having no carrier service capable of meeting such need, the commission may, in its discretion upon affidavits or such other evidence as it may deem sufficient and without hearings or other proceedings, grant temporary authority for such service by a common carrier by motor vehicle or a contract carrier by motor vehicle, as the case may be. Such affidavits or other evidence as the commission may determine must accompany the application for temporary authority. The affidavits or other evidence must specify in detail the reason for supporting the application for temporary authority and the term within which the temporary authority would be required.

(2) Such temporary authority, unless suspended or revoked for good cause, shall be valid for such time as the commission shall specify, but for not more than 90 days. Temporary authority initially granted pursuant to the provisions hereof may be extended by the commission without hearings or other proceedings, but in no case shall a grant of temporary authority with extensions exceed an aggregate of 120 days.

(3) Neither the granting of temporary authority nor operation thereunder shall create any presumption that corresponding permanent authority will be granted thereafter. Transportation service rendered under such temporary authority shall be subject to all applicable provisions of this chapter and to the rules and requirements of the commission thereunder.

History: **En. Sec. 1, Ch. 148, L. 1971; amd. Sec. 1, Ch. 231, L. 1973; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-131.**

69-12-208. Provisions for bus service. The commission, after 10 days' notice and public hearing, shall have the power to compel all motor carrier bus lines under its jurisdiction to furnish, provide, and maintain such service, instrumentalities, equipment, facilities, and time schedules as shall promote the safety, health, comfort, and convenience of its passengers and employees and the public and as shall in all respects be adequate, efficient, just, and reasonable.

History: **En. Sec. 2, Ch. 143, L. 1943; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-129.**

69-12-209. Enforcement procedures. (1) Orders and final determinations of the commission in all proceedings pursuant to the provisions of this chapter shall be enforced in the manner provided for the enforcement of orders of the commission by the provisions of parts 1, 3, 4, and 8 of chapter 14.

(2) If any motor carrier shall operate in violation of the provisions of this chapter or shall fail or neglect to obey any lawful order of the commission, the commission or any party injured may apply to any court of competent jurisdiction, in any county where such motor carrier is engaged in business, for the enforcement of this chapter or such order. The court shall enforce

obedience thereto by writ of injunction or other proper process, mandatory or otherwise, to restrain such carrier or its officers, agents, employees, or representatives from further violation of this chapter or such order or to enjoin upon it or them obedience to the same.

History: En. Sec. 14, Ch. 184, L. 1931; re-en. Sec. 3847.14, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-114(part).

Part 3

Classification and Motor Carrier Certificates

69-12-301. Classification of motor carriers. (1) Motor carriers are hereby divided into four classes to be known as:

(a) Class A motor carriers;
(b) Class B motor carriers;
(c) Class C motor carriers;
(d) Class D motor carriers.

(2) Class A motor carriers shall embrace all motor carriers operating between fixed termini or over a regular route and under regular rates or charges, based upon either station-to-station rates or upon a mileage rate or scale.

(3) Class B motor carriers shall embrace all motor carriers operating under regular rates or charges based upon either station-to-station rates or upon a mileage rate or scale and not between fixed termini or over a regular route.

(4) Class C motor carriers shall embrace all motor carriers operating motor vehicles for distributing, delivering, or collecting wares, merchandise, or commodities or transporting persons, where the remuneration is fixed in and the transportation service furnished under a contract, charter, agreement, or undertaking.

(5) Class D motor carriers embraces all motor carriers operating motor vehicles transporting (including pickup and disposal) ashes, trash, waste, refuse, rubbish, garbage, and organic and inorganic matter.

History: En. Sec. 2, Ch. 184, L. 1931; re-en. Sec. 3847.2, R.C.M. 1935; amd. Sec. 1, Ch. 172, L. 1973; amd. Sec. 1, Ch. 145, L. 1974; amd. Sec. 1, Ch. 138, L. 1977; R.C.M. 1947, 8-102(part).

69-12-302. Conditions resulting in Class C carrier considered as Class B carrier. (1) A Class C motor carrier operating with more than six contracts which are in effect at any given time and each of which are effective for a minimum of 180 days is considered to be operating as a Class B motor carrier. Before transportation service may commence, pertinent contract information shall be furnished to the commission for each contract on forms prescribed by the commission. The commission shall retain a duplicate of the information in its files, and a copy of the form, confirmed by the commission, must be kept in the cab of the motor carrier when operating under that contract.

(2) All Class C motor carriers must annually submit to the commission the names and addresses of all persons, corporations, or other legal entities with whom the Class C carrier has executed a contract, charter, agreement, or undertaking for the distribution, delivery, or collection of wares, merchandise, or commodities or for transporting persons.

(3) The provisions of this section shall not apply to solid waste contractors, household goods carriers, or house movers, as defined by the department of public service regulation, or any carrier whose authority is confined by certificate to transportation within a distance of 50 miles or less from a particular location and that is performing pickup and delivery service under contract for one or more common carriers within that area.

History: En. Sec. 2, Ch. 184, L. 1931; re-en. Sec. 3847.2, R.C.M. 1935; amd. Sec. 1, Ch. 172, L. 1973; amd. Sec. 1, Ch. 145, L. 1974; amd. Sec. 1, Ch. 138, L. 1977; R.C.M. 1947, 8-102(part); amd. Sec. 1, Ch. 24, L. 1979.

69-12-303 through 69-12-310 reserved.

69-12-311. Class A motor carrier certificate. (1) No Class A motor carrier shall operate for the transportation of persons and/or property for hire on any public highway in this state without first having obtained from the commission, under the provisions of this chapter, a certificate declaring that public convenience and necessity require such operation.

(2) A motor carrier making application for such certificate shall do so in writing, separately for each route, which petition shall be verified by the applicant and shall specify the following matters:

(a) the name and address of the applicant and the names and addresses of its officers, if any;

(b) the public highway or highways over which and the fixed termini between which or the regular route or routes over which it intends to operate;

(c) the kind of transportation, whether passenger, freight, or both, together with a full and complete description of the character of the vehicle or vehicles to be used, including the seating capacity of any vehicle to be used for passenger traffic and the tonnage capacity of any vehicle to be used in freight traffic;

(d) the proposed time schedule;

(e) a schedule of the tariff or rates desired to be charged for the transportation of freight and/or passengers;

(f) a complete and detailed description of the property proposed to be devoted to the public service;

(g) a detailed statement showing the assets and liabilities of such applicant; and

(h) such other or additional information as the commission may by order require.

(3) Such application shall be accompanied by a filing fee of $100 to $300, to be set by the commission based on the number of counties for which the certificate is requested.

History: En. Sec. 8, Ch. 184, L. 1931; re-en. Sec. 3847.8, R.C.M. 1935; amd. Sec. 22, Ch. 121, L. 1965; amd. Sec. 1, Ch. 243, L. 1974; amd. Sec. 1, Ch. 472, L. 1977; R.C.M. 1947, 8-108.

69-12-312. Class B motor carrier certificate. (1) No Class B motor carrier shall operate for the transportation of persons and/or property for hire on any public highway in this state without first having obtained from the commission, under the provisions of this chapter, a certificate that public convenience and necessity require such operations.

(2) A motor carrier making application for such permit shall do so in writing, separately for each locality for which consideration is desired, which petition shall be verified and shall specify the following matters:

(a) name and address of the applicant and the names and addresses of its officers, if any;

(b) the kind of transportation, whether passenger, freight, or both, together with a full and complete description of the character of the vehicle or vehicles to be used, including the seating capacity of any vehicle to be used for passenger traffic and the tonnage capacity of any vehicle to be used in freight traffic;

(c) the locality and character of operations to be conducted;

(d) a schedule of the tariff of rates desired to be charged for the transportation of freight and/or passengers;

(e) a complete and detailed description of the property proposed to be devoted to the public service;

(f) a detailed statement showing the assets and liabilities of such applicant; and

(g) such other or additional information as the commission may by order require.

(3) Such application shall be accompanied by a filing fee of $100 to $300, to be set by the commission based on the number of counties for which the certificate is requested.

History: En. Sec. 9, Ch. 184, L. 1931; re-en. Sec. 3847.9, R.C.M. 1935; amd. Sec. 23, Ch. 121, L. 1965; amd. Sec. 2, Ch. 243, L. 1974; amd. Sec. 2, Ch. 472, L. 1977; R.C.M. 1947, 8-109.

69-12-313. Class C motor carrier certificate. (1) No Class C motor carrier, except any Class C motor carrier operating pursuant to the terms and conditions of a contract with the United States government or an agency or department thereof or of a contract for transporting solid waste with the state or an agency or department thereof, shall operate for the distribution, delivery, or collection of goods, wares, merchandise, or commodities or for the transportation of persons on any public highway in this state without first having obtained from the commission, under the provisions of this chapter, a certificate that public convenience and necessity require such operation.

(2) A motor carrier making application for such permit shall do so in writing, separately for each route or locality for which consideration is desired, which petition shall be verified by the applicant and shall specify the following matters:

(a) the name and address of the applicant and the names and addresses of its officers, if any;

(b) the public highways or highways over which and the fixed termini between which or the route or routes over which it intends to operate, if the same are fixed, or the particular city, town, station, or locality from and/or to which the applicant intends to operate;

(c) the kind of transportation and the character of the goods, wares, merchandise, or commodities to be distributed, delivered, or collected, together with a full and complete description of the character of the vehicle or vehicles, including the rated tonnage capacity of such vehicles, to be used in such service of distribution, delivery, or collection; and

(d) such other or additional information as the commission may by order require.

(3) Such application shall be accompanied by a fee of $100 to $300, to be set by the commission based on the number of counties for which the certificate is requested.

(4) The submission of a Class C motor carrier application must be accompanied by the names and addresses of any person, corporation, or other legal entity with whom the applicant has executed a contract for the distribution, delivery, or collection of wares, merchandise, or commodities or transporting persons. Such contracts must be in writing, executed by the parties and submitted to the commission for examination.

History: (1) thru (3)En. Sec. 10, Ch. 184, L. 1931; re-en. Sec. 3847.10, R.C.M. 1935; amd. Sec. 24, Ch. 121, L. 1965; amd. Sec. 1, Ch. 69, L. 1971; amd. Sec. 3, Ch. 243, L. 1974; amd. Sec. 1, Ch. 179, L. 1975; amd. Sec. 3, Ch. 472, L. 1977; Sec. 8-110, R.C.M. 1947; (4)En. Sec. 11, Ch. 184, L. 1931; re-en. Sec. 3847.11, R.C.M. 1935; amd. Sec. 1, Ch. 101, L. 1955; amd. Sec. 2, Ch. 69, L. 1971; amd. Sec. 1, Ch. 339, L. 1973; amd. Sec. 4, Ch. 243, L. 1974; amd. Sec. 3, Ch. 315, L. 1974; Sec. 8-111, R.C.M. 1947; R.C.M. 1947, 8-110(1), 8-111(part).

69-12-314. Class D motor carrier certificate. (1) Class D carriers shall conduct operations pursuant to a certificate of public convenience and necessity issued by the commission authorizing the transportation of the commodities described in 69-12-301(5). Class D carriers when applying for a new or additional authority shall file an application with the commission in accordance with the requirements of this chapter and the rules of the commission.

(2) A motor carrier may not possess a Class D motor carrier certificate or operate as a Class D motor carrier unless the motor carrier actually engages in the transportation of ashes, trash, waste, refuse, rubbish, garbage, and organic and inorganic matter on a regular basis as part of the motor carrier's usual business operation.

History: En. Sec. 2, Ch. 184, L. 1931; re-en. Sec. 3847.2, R.C.M. 1935; amd. Sec. 1, Ch. 172, L. 1973; amd. Sec. 1, Ch. 145, L. 1974; amd. Sec. 1, Ch. 138, L. 1977; R.C.M. 1947, 8-102(part); amd. Sec. 1, Ch. 387, L. 1979.

69-12-315 through 69-12-320 reserved.

69-12-321. Hearing on application for motor carrier certificate. (1) Upon the filing of such application by a Class A, Class B, Class C, or Class D motor carrier, except a Class C motor carrier authorized to operate under the terms of a contract with the United States government (or an agency or department thereof), or upon the filing of a request for a transfer of authority, the commission shall give notice thereof to any interested party. The commission shall fix a time and place for hearing thereon whenever a protest or a request for a hearing is received. The hearing is to be set for a date not later than 60 days after receipt of a protest or a hearing request by the commission. Whenever no protests or hearing requests are received, the commission may act on the application without a hearing as prescribed by commission rules.

(2) Any motor carrier referred to in 69-12-322, the department of highways, the governing board or boards of any such county, town, or city into or through which the route or service as proposed may extend, and any person or corporation concerned are hereby declared to be interested parties to the proceedings and may offer testimony for or against the granting of the certificate.

(3) The contracting parties referred to in 69-12-313(4) must appear and offer testimony in support of the applicant.

(4) However, an application by a Class A, Class B, Class C, or Class D motor carrier for a certificate may be disallowed without a public hearing thereon when it appears from the records of the commission that the route or territory sought to be served by the applicant has previously been made the basis of a public investigation and finding by the commission that public convenience and necessity do not require the proposed motor carrier service unless it is made to affirmatively appear in the application by a recital of the facts that conditions obtaining over the route or in the territory and affecting transportation facilities therein have materially changed since said public investigation and finding and that public convenience and necessity do now require the motor carrier operation.

History: Ap. p. Sec. 1, Ch. 102, L. 1955; amd. Sec. 3, Ch. 69, L. 1971; amd. Sec. 20, Ch. 315, L. 1974; Sec. 8-111.1, R.C.M. 1947; Ap. p. Sec. 11, Ch. 184, L. 1931; re-en. Sec. 3847.11, R.C.M. 1935; amd. Sec. 1, Ch. 101, L. 1955; amd. Sec. 2, Ch. 69, L. 1971; amd. Sec. 1, Ch. 339, L. 1973; amd. Sec. 4, Ch. 243, L. 1974; amd. Sec. 3, Ch. 315, L. 1974; Sec. 8-111, R.C.M. 1947; R.C.M. 1947, 8-111(part), 8-111.1(part); amd. Sec. 1, Ch. 25, L. 1979; amd. Sec. 1, Ch. 55, L. 1979.

Compiler's Comments

Composite section. This section was amended by Ch. 25 and Ch. 55, L. 1979, and a composite section was prepared by the Code Commissioner, 1979. Both chapters amended subsection (1) concerning notice of hearing, and in preparing the composite the language "fix a time and place for hearing thereon" was not deleted, as was done in Ch. 55, in order to accommodate the changes made by Ch. 25.

69-12-322. Notice of hearing. (1) Whenever a hearing is scheduled, whether as a result of a protest or request or upon the commission's own motion, the commission shall cause a copy of the petition and notice of hearing thereon to be served upon an officer or owner of any motor carrier that in the opinion of the commission might be affected by the granting of any such certificate and shall notify any other affected party at least 10 days before the date of hearing.

(2) Notice of such hearing shall be published:

(a) in the legal advertising section of a local newspaper or newspapers deemed by the commission to have a circulation sufficient to reach the consuming public in the area under consideration for applications for Class C authority and geographically limited Class B authority; and

(b) in appropriate newspapers deemed by the commission to have sufficient statewide circulation in the case of applications for Class A authority and geographically broad contemplated Class B authority.

History: En. Sec. 11, Ch. 184, L. 1931; re-en. Sec. 3847.11, R.C.M. 1935; amd. Sec. 1, Ch. 101, L. 1955; amd. Sec. 2, Ch. 69, L. 1971; amd. Sec. 1, Ch. 339, L. 1973; amd. Sec. 4, Ch. 243, L. 1974; amd. Sec. 3, Ch. 315, L. 1974; R.C.M. 1947, 8-111(part); amd. Sec. 2, Ch. 55, L. 1979.

69-12-323. Decision on application. (1) The commission must issue, within 180 days from and after the date of the completed filing of said application, its finding, order, or decision on said application and the evidence presented in support thereof at the time of said hearing. The commission may extend the foregoing time for decision to a date requested by the applicant.

(2) If after hearing upon application for a certificate, the commission finds from the evidence that public convenience and necessity require the authorization of the service proposed or any part thereof, as the commission

shall determine, a certificate therefor shall be issued. In determining whether a certificate should be issued, the commission shall give reasonable consideration to the transportation service being furnished or that will be furnished by any railroad or other existing transportation agency and shall give due consideration to the likelihood of the proposed service being permanent and continuous throughout 12 months of the year and the effect which the proposed transportation service may have upon other forms of transportation service which are essential and indispensable to the communities to be affected by such proposed transportation service or that might be affected thereby.

(3) The commission may issue the certificate as prayed for or issue it for the partial exercise only of the privilege sought and may attach to the exercise of the rights granted by such certificate such terms and conditions as in its judgment the public convenience and necessity may require. When a certificate has once been issued to a motor carrier as provided in this part, such certificate shall continue in force until terminated by the commission for cause as herein provided or until terminated by the owner's failure to comply with 69-12-402.

History: (1)En. Sec. 1, Ch. 102, L. 1955; amd. Sec. 3, Ch. 69, L. 1971; amd. Sec. 20, Ch. 315, L. 1974; Sec. 8-111.1, R.C.M. 1947; (2)En. Sec. 11, Ch. 184, L. 1931; re-en. Sec. 3847.11, R.C.M. 1935; amd. Sec. 1, Ch. 101, L. 1955; amd. Sec. 2, Ch. 69, L. 1971; amd. Sec. 1, Ch. 339, L. 1973; amd. Sec. 4, Ch. 243, L. 1974; amd. Sec. 3, Ch. 315, L. 1974; Sec. 8-111, R.C.M. 1947; (3)En. Sec. 12, Ch. 184, L. 1931; re-en. Sec. 3847.12, R.C.M. 1935; Sec. 8-112, R.C.M. 1947; R.C.M. 1947, 8-111(part), 8-111.1(part), 8-112(part); amd. Sec. 1, Ch. 54, L. 1979.

69-12-324. Special provisions when federal or state contract involved. (1) The transportation for hire of any persons or commodities between any two points within the state by any motor carrier pursuant to the terms of a written contract between said carrier and the United States government or an agency or department thereof or the state or an agency or department thereof for the transportation of solid waste shall be deemed a transportation movement subject to the provisions of this chapter. However, the presentation of the written contract to the commission shall be deemed sufficient proof of public convenience and necessity in accordance with the terms and conditions contained within the United States government or state contract.

(2) The Class C certificate of public convenience and necessity issued pursuant to the terms and conditions of the United States government or state contract may be issued by the commission upon receipt of an executed copy of the United States government or state contract. The certificate of public convenience and necessity may be issued thereafter without requiring the commission to fix a time and place for public hearing.

(3) The certificate of public convenience and necessity, issued pursuant to the terms of the United States government or state contract, is authorized only for the duration of the United States government or state contract concerned. The certificate may be renewed for another definite term if the same motor carrier is the motor carrier authorized to operate under the United States government or state contract.

History: En. Sec. 10, Ch. 184, L. 1931; re-en. Sec. 3847.10, R.C.M. 1935; amd. Sec. 24, Ch. 121, L. 1965; amd. Sec. 1, Ch. 69, L. 1971; amd. Sec. 3, Ch. 243, L. 1974; amd. Sec. 1, Ch. 179, L. 1975; amd. Sec. 3, Ch. 742, L. 1977; R.C.M. 1947, 8-110(2).

69-12-325. Transfer of certificate or privilege. Any right, privilege, or certificate held, owned, or obtained by any motor carrier may be sold, assigned, leased, transferred, and inherited as other property only by the authorization of the commission.

History: En. Sec. 12, Ch. 184, L. 1931; re-en. Sec. 3847.12, R.C.M. 1935; R.C.M. 1947, 8-112(part).

69-12-326. Lease of certificate. (1) An authorized carrier operating within the state may lease its certificate or any integral segment thereof to another carrier only by approval of the commission. The contract or lease under which the certificate is leased must be in writing and approved by the commission prior to any operation under the certificate. The contract or lease must specify:

(a) the period for which a certificate is to be leased, which shall not be less than 30 days;

(b) the compensation to be paid;

(c) the time or date upon which the lease will commence and terminate; and

(d) the signatures of the parties thereto.

(2) Operation under the certificate is prohibited until approved by the commission in writing. During the period of the contract or lease, transportation movements under the contract or lease must be performed by the entity contracting for or leasing the certificate, or any integral segment thereof, while transportation movements by the owner (lessor) are prohibited.

History: En. 8-103.3 by Sec. 1, Ch. 107, L. 1969; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-103.3.

69-12-327. Revocation of certificate — right of review. (1) If it appears that a certificate holder is violating or refusing to observe any of the commission's orders or rules or any provision of Title 69, as amended, the commission may issue an order to the certificate holder to show cause why the certificate should not be revoked. If the certificate holder fails to appear to show cause as ordered by the commission, the certificate may be revoked without a hearing. If the holder does appear to show cause, the commission may:

(a) dismiss the proceeding, notifying the holder that the certificate is not revoked; or

(b) hold a hearing on the question of revocation, notifying the holder of the time and place for the hearing.

(2) The holder of any such certificate or privilege shall have all rights of rehearing and review as to such order of the commission as is provided in this chapter.

History: En. Sec. 7, Ch. 184, L. 1931; re-en. Sec. 3847.7, R.C.M. 1935; R.C.M. 1947, 8-107; amd. Sec. 1, Ch. 31, L. 1979.

69-12-328 through 69-12-330 reserved.

69-12-331. Special provisions relating to transportation of buildings. (1) A certificate that permits the transportation of a building other than a mobile home as defined in 15-1-101 from its existing foundation to a new location shall permit such transportation throughout the state and may not restrict such transportation to a particular region of the state.

(2) The provisions of this section shall apply only to those licensed motor carriers who have specifically identified the moving of buildings or certain types of buildings as an area of authorization on their present public service commission certification or to those motor carriers operating under an authority broad enough to include the moving of buildings who have been actively engaged in the business of moving buildings for a period of 2 years prior to July 1, 1979. For purposes of this subsection, a motor carrier has been actively engaged in the business of moving buildings if the moving of buildings has constituted a substantial part of his business during the 2-year period prior to July 1, 1979.

(3) The commission shall adopt rules to implement subsection (1).

History: En. Sec. 1, Ch. 593, L. 1979.

Compiler's Comments

Codification. Sec. 2, Ch. 593, L. 1979, provided: "It is intended that section 1 be codified as an integral part of Title 69, chapter 12, part 3, and the provisions of Title 69, chapter 12, apply to section 1."

Statement of intent. The statement of intent adopted with SB 70 (Ch. 593, L. 1979) provided: "The legislature intends that persons engaged in the transportation of buildings other than mobile homes be permitted to offer such transportation service on a statewide basis rather than on a regional basis. Rules adopted under this bill shall provide for the reissuance of certificates of public convenience and necessity to those persons engaged solely in the transportation of buildings and for the modification of certificates issued to persons authorized to engage in other activities in addition to building transportation."

Part 4

Requirements for Motor Carriers

69-12-401. Compliance with state law. It shall be unlawful for any corporation or person, its or his officers, agents, employees, or servants, to operate any motor vehicle for the transportation of persons and/or property for hire on any public highway in this state except in accordance with the provisions of this chapter.

History: En. Sec. 2, Ch. 184, L. 1931; re-en. Sec. 3847.2, R.C.M. 1935; amd. Sec. 1, Ch. 172, L. 1973; amd. Sec. 1, Ch. 145, L. 1974; amd. Sec. 1, Ch. 138, L. 1977; R.C.M. 1947, 8-102(b).

69-12-402. Compliance with commission rules. No certificate shall be issued or remain in force unless the holder thereof shall comply with such rules of the commission as it shall adopt governing the filing of bonds, policies of insurance, or such security or agreement in such form and adequate amount and conditioned as the commission may require for:

(1) the prompt payment of all compensation or fees due the state under the provisions of this chapter; and

(2) the payment of any final judgment which may be rendered against any such motor carrier arising out of the death of or injury to any passenger or injury to other persons or property as a result of any negligent operation of the motor vehicles or such motor carrier, with power in the commission to permit self-insurance whenever, in its opinion, the financial ability of the motor carrier warrants.

History: En. Sec. 13, Ch. 184, L. 1931; re-en. Sec. 3847.13, R.C.M. 1935; R.C.M. 1947, 8-113.

69-12-403. Discontinuance of service. No Class A or Class B motor carrier shall abandon or discontinue any service established under this chapter without an order of the commission therefor.

History: En. Sec. 5, Ch. 184, L. 1931; re-en. Sec. 3847.5, R.C.M. 1935; R.C.M. 1947, 8-105.

69-12-404. Suspension of intrastate operating authority by petition. (1) Every motor carrier as defined within this chapter may petition the commission in writing to suspend its intrastate operating authority for a period not to exceed 6 months. An additional 6 months' suspension may be requested and granted, but no other. Such suspension may be granted by the commission upon a showing of present absence of public convenience and necessity or other showing of matters affecting motor carrier transportation.

(2) The suspension of any intrastate operating authority of any carrier as provided for in subsection (1) for a period of 12 consecutive months shall be deemed to establish a prima facie presumption of absence of public convenience and necessity. If after notice and hearing the carrier is unable to prove the existence of public convenience and necessity or existing demand for the transportation service, the commission is authorized to cancel such certificate of public convenience and necessity.

History: (1)En. 8-107.1 by Sec. 1, Ch. 173, L. 1973; Sec. 8-107.1, R.C.M. 1947; (2)En. 8-107.2 by Sec. 1, Ch. 236, L. 1973; Sec. 8-107.2, R.C.M. 1947; R.C.M. 1947, 8-107.1, 8-107.2.

69-12-405. Transportation of livestock. (1) Except as provided in subsection (2), a person, corporation, association or its officers, agents, employees, or servants may not operate any motor vehicle or combination of vehicles in the commercial transportation of livestock for hire without having first obtained a Class B certificate of public convenience and necessity from the commission.

(2) (a) The provisions of this section shall not apply to the transportation of livestock by motor carrier by a bona fide farmer, rancher, or raiser of livestock in his own vehicle or vehicles or when such farmer, rancher, or raiser of livestock provides transportation for the livestock of another farmer, rancher, or raiser of livestock between farm and farm, ranch and ranch, or pasture and pasture or to a point.

(b) Any commercial transportation movement of livestock in any motor vehicle having a cargo bed of 22 feet in length or less shall be deemed exempt from the provisions of this section.

History: Ap. p. Sec. 2, Ch. 275, L. 1971; Sec. 8-101.1, R.C.M. 1947; Ap. p. Sec. 3, Ch. 275, L. 1971; amd. Sec. 1, Ch. 233, L. 1973; amd. Sec. 2, Ch. 315, L. 1974; Sec. 8-101.2, R.C.M. 1947; R.C.M. 1947, 8-101.1, 8-101.2.

69-12-406. Restriction on transportation of certain waste. No Class A, B, or C carrier will be authorized or permitted to transport ashes, trash, waste, refuse, rubbish, garbage, or organic and inorganic matter within the state.

History: En. 8-102.1 by Sec. 2, Ch. 138, L. 1977; R.C.M. 1947, 8-102.1(part).

69-12-407. Records and reports. (1) All records, books, accounts, and files of every Class A, Class B, Class C, and Class D motor carrier in this state, so far as the same shall relate to the business of transportation conducted by such motor carrier, shall at all times be subject to examination by the commission or by any authorized agent or employee of the commission. The commission shall prescribe a uniform system of accounts and uniform reports covering the operations of such Class A, Class B, Class C, and Class D motor carriers, and every motor carrier authorized to operate as such in accordance with the provisions of this chapter shall keep its records, books, and accounts according to such uniform system, insofar as possible.

(2) Before April 1 of each year, unless this deadline has been extended for good cause by the commission, every motor carrier authorized to engage in such business shall file with the commission a report, under oath, on a form prescribed and furnished by the commission. Those carriers filing an annual report with the interstate commerce commission shall, in addition to filing the report prescribed by the public service commission, submit to the public service commission a copy of the annual report filed with the interstate commerce commission. In addition to such annual reports every motor carrier shall prepare and file with the commission, at the time or times and in the form to be prescribed by the commission, annual reports, special reports, and statements giving to the commission such information as it shall require in order to perform its duties under this chapter.

(3) In addition to other reporting requirements, the commission shall require the holder of a Class D motor carrier certificate to provide sufficient information to show that the carrier is entitled to possess the Class D motor carrier certificate under the requirements of 69-12-314.

History: En. Sec. 18, Ch. 184, L. 1931; re-en. Sec. 3847.18, R.C.M. 1935; amd. Sec. 1, Ch. 232, L. 1973; amd. Sec. 4, Ch. 472, L. 1977; R.C.M. 1947, 8-118; amd. Sec. 1, Ch. 353, L. 1979; amd. Sec. 2, Ch. 387, L. 1979.

69-12-408. Identification of ownership of certain large motor vehicles. (1) (a) No motor vehicle or combination of vehicles, except farm vehicles, having a gross weight of more than 10,000 pounds shall operate upon the highways of the state unless there shall be displayed on both sides of each vehicle operated under its own power, either alone or in combination, the name or trade name and address or M.R.C. or I.C.C. certificate number of the person or corporation under whose jurisdiction the vehicle or vehicles is or are being operated.

(b) The display of name must be in letters in sharp contrast to the background and in size, shape, and color readily legible in daylight from a distance of 50 feet while the vehicle is not in motion. Such display shall be kept and maintained in such manner as to remain so legible. The display may be accomplished either by painting the information on the vehicle or through the use of a decal or a removable device, so prepared as to otherwise meet the identification and legibility requirements of this section.

(2) This section shall not apply to motor vehicles being transported to dealers from point of manufacture or from one dealer to another or when being demonstrated to a prospect or delivered to a buyer from a dealer or a manufacturer.

(3) Any person convicted of violating this section shall be guilty of a misdemeanor and shall be punished for each offense by a fine of not more than $100, by imprisonment for not more than 1 month, or both.

History: (1)En. Sec. 1, Ch. 133, L. 1963; Sec. 53-801, R.C.M. 1947; (2)En. Sec. 2, Ch. 133, L. 1963; Sec. 53-802, R.C.M. 1947; (3)En. Sec. 3, Ch. 133, L. 1963; Sec. 53-803, R.C.M. 1947; R.C.M. 1947, 53-801, 53-802, 53-803.

69-12-409 through 69-12-420 reserved.

69-12-421. Annual fee for motor carriers. (1) Except as provided in subsection (2), in addition to all of the licenses, fees, or taxes imposed upon motor vehicles in this state and in consideration of the use of the public highways of this state, every motor carrier shall, at the time of the issuance of a certificate and annually thereafter, on or between January 1 and January 15 of each calendar year, pay to the public service commission of Montana the sum of $5 for every motor vehicle operated by the carrier over or upon the public highways of this state.

(2) (a) A motor carrier engaged in seasonal operations only, where its operations do not extend continuously over a period of not to exceed 6 months in any calendar year, shall only be required to pay compensation and fees in a sum equal to one-half of the compensation and fees herein provided.

(b) The compensation and fees herein imposed shall not apply to motor vehicles maintained and used by a motor carrier as standby or emergency equipment. The commission shall have the power and it is hereby made its duty to determine what motor vehicles shall be classed as standby or emergency equipment.

History: En. Sec. 16, Ch. 184, L. 1931; re-en. Sec. 3847.16, R.C.M. 1935; amd. Sec. 1, Ch. 473, L. 1973; R.C.M. 1947, 8-116(a).

69-12-422. Effect of failure to pay compensation, fees, or charges. (1) Upon the failure of any motor carrier to pay such compensation when due, the commission may in its discretion revoke the carrier's certificate or privilege, and no carrier whose certificate or privilege is so revoked shall again be authorized to conduct such business until such compensation shall be paid.

(2) All compensation, fees, or charges imposed and accruing under the provisions of this chapter shall be a lien upon all property of the motor carrier used in its operations under this chapter. Said lien shall attach at the time the compensation, fees, or charges become due and payable and shall have the effect of an execution duly levied on such property of the motor carrier and shall so remain until said compensation, fees, or charges are paid or the property sold for the payment thereof.

History: En. Sec. 16, Ch. 184, L. 1931; re-en. Sec. 3847.16, R.C.M. 1935; amd. Sec. 1, Ch. 473, L. 1973; R.C.M. 1947, 8-116(c), (d).

69-12-423. Fees to be charged by commission. (1) The public service commission shall, except as otherwise provided by law, require and receive fees before filing annual reports, tariffs, schedules, and supplements of these and shall require and receive fees for copies of orders, documents, classifications, blank forms, and other instruments prepared by it or on file in its office, unless provided by law to be furnished free of charge, under the following schedule:

(a) filing annual reports, each ....$ 5.00;

(b) filing tariffs, time schedules, and supplements thereto, each ......$ 2.00;

(c) for issuing certificates of public convenience and necessity to motor carriers, each ....$ 2.00;

(d) classification for motor carriers, each ....$ .50;

(e) for a copy of the rules for motor carriers and blank forms of annual reports for common carriers .... cost.

(2) The commission shall require and receive an additional sum to be set by the commission to pay the cost of publishing such notice as may be required by this chapter.

(3) This section does not require or authorize the public service commission to collect fees for the filing of annual reports, tariffs, schedules, and supplements of these which relate solely to interstate commerce.

History: En. Sec. 1, Ch. 100, L. 1935; re-en. Sec. 3847.26, R.C.M. 1935; amd. Sec. 1, Ch. 73, L. 1947; amd. Sec. 1, Ch. 67, L. 1971; amd. Sec. 4, Ch. 315, L. 1974; amd. Sec. 5, Ch. 472, L. 1977; R.C.M. 1947, 8-126(part); amd. Sec. 2, Ch. 500, L. 1979.

Part 5

Ratemaking Requirements

69-12-501. Rate schedules to be maintained. (1) Every Class A or B motor carrier holding a certificate must maintain on file with the commission a full and complete schedule of its rates, fares, charges, classifications, and rules of service and any and all tariff provisions relating to such rates, fares, charges, classifications, or rules. Every schedule on file and approved on March 7, 1961, shall remain in full force and effect until changed or modified by the commission or by the carrier with the approval of the commission.

(2) No change, modification, alteration, increase, or decrease in any rate, fare, charge, classification, or rule of service shall be made by any motor carrier without first obtaining the approval of the commission. The commission shall prescribe rules providing for the form and style of all schedules and tariffs and for the procedures to be followed in filing or publishing any changes or modifications of the same.

History: En. Sec. 2, Ch. 201, L. 1961; R.C.M. 1947, 8-104.2.

69-12-502. Prohibition on deviation from rate schedules. It shall be unlawful for any Class A or B motor carrier to charge, demand, receive, or collect any greater or less rate, charge, or fare than that fixed by the commission for the transportation service provided. When maximum or minimum rates have been established for any service provided by any Class C motor carrier, it shall likewise be unlawful for such carrier to charge, demand, receive, or collect any greater compensation or rate than that established for the service by any applicable maximum rate or any less compensation or rate than that established by any applicable minimum rate. It also shall be unlawful for any Class A or B motor carrier or any Class C motor carrier subject to maximum or minimum rates to refund or remit, in any manner or by any device, any portion of the rates, fares, and charges required to be collected under the schedule of the Class A or B carrier on file with the commission or under the maximum or minimum rates established by the commission for the Class C carrier.

History: En. Sec. 3, Ch. 201, L. 1961; R.C.M. 1947, 8-104.3.

69-12-503. Rates to be reasonable and nondiscriminatory. (1) All rates, fares, charges, classifications, or rules of service for the transportation of property and/or persons upon the public highways of this state must be fair, just, reasonable, and nondiscriminatory. No motor carrier operating under established rates shall make, give, or permit any undue preference or advantage to any particular person, company, corporation, locality, or description of traffic, nor shall such motor carrier subject any particular person, company, corporation, locality, or description of traffic to any prejudice or disadvantage in any respect. Nothing herein provided shall prevent the commission from authorizing different rates or schedules of rates for service between the same places or between different points of origin and/or destination within the same places when such different rates are justified by the differing character of service to be rendered by the carrier to a shipper or consignee.

(2) The commission may, upon its own initiative or upon the complaint of any interested party, investigate any rate, fare, charge, classification, or rule of service contained in the schedule of any motor carrier. If the commission shall find, after such investigation, that any such rate, fare, charge, classification, or rule of service is unfair, unjust, unreasonable, or discriminatory, it shall disallow the same and fix a rate, fare, charge, classification, or rule of service which shall be fair, just, reasonable, and nondiscriminatory and it shall order the affected motor carrier or carriers to conform to such modified schedule. Each motor carrier affected by any complaint or investigation shall first be given notice of the same and an opportunity to be heard before the commission.

History: **En. Sec. 4, Ch. 201, L. 1961; amd. Sec. 2, Ch. 182, L. 1971; R.C.M. 1947, 8-104.4.**

69-12-504. Procedure to revise rate schedule. (1) No motor carrier shall change or revise any rate, fare, charge, classification, or rule of service contained in its schedule without first obtaining approval therefor from the commission. Such changes or revisions shall be made by filing with the commission the tariff sheet or sheets containing such changes or revisions, plainly stating the changes or revisions to be made, and by submitting at the same time testimony and exhibits supporting the requested change or revision and prepared by the motor carrier. Additional testimony or exhibits may be submitted before or during the hearing provided for in 69-12-505 and may be submitted after the hearing with the approval of the commission. The public shall be provided with such notice of the proposed changes or revisions as the commission shall, by rule, require.

(2) The tariff sheets containing changes or revisions shall be filed with the commission at least 45 days before the proposed effective date. The change or revision shall be effective on the stated effective date unless disallowed or suspended by the commission prior to this date. However, the commission may, for good cause, allow any change or revision to become effective on less than 45 days' notice.

History: **En. Sec. 5, Ch. 201, L. 1961; amd. Sec. 1, Ch. 235, L. 1973; R.C.M. 1947, 8-104.5(part); amd. Sec. 1, Ch. 94, L. 1979.**

69-12-505. Suspension of proposed rate revision — hearing. (1) Upon its own initiative or upon the complaint of any interested party filed with the commission within 20 days after the date upon which a change or revision of any rate, fare, charge, or classification is filed with the commission, the commission may suspend the operation of such rate, fare, charge, or classification for a period not to exceed 180 days. The order directing such suspension must be issued by the commission not less than 2 business days prior to the proposed effective date. The motor carrier or carriers filing such rate, fare, charge, or classification shall be given prompt notice by the complaining party, mailing a copy of the complaint concerning such proposed change or revision to the carrier or publishing agent, and such carrier or carriers also shall be given an opportunity to reply to any such complaint. If the proposed change or revision is in a tariff issued by a tariff publishing bureau for a motor carrier or carriers, notice to such bureau of any complaint will constitute notice to the participating carriers in such tariff.

(2) (a) If all the protests are withdrawn and the commission finds the proposed increase justified, the commission may vacate the suspension and permit the proposed rates to become effective without a public hearing.

(b) Unless the suspension has been vacated, whenever the suspension of any proposed change or revision in a tariff is ordered by the commission, it shall also order a public hearing to consider the reasonableness of the proposed change or revision. Due notice shall be given for such hearing to all known interested or affected persons, and the same shall be allowed to appear and present evidence. Additional prepared testimony may be presented before or during the hearing and may also be submitted after the hearing with the permission of the commission.

(3) After considering the evidence presented at such hearing, the commission shall issue an order approving, denying, or modifying the proposed change or revision. Unless such hearing is held and such order is issued within 180 days from the date upon which the suspension was ordered, the proposed change or revision shall be deemed approved and effective as filed.

History: En. Sec. 5, Ch. 201, L. 1961; amd. Sec. 1, Ch. 235, L. 1973; R.C.M. 1947, 8-104.5(part); amd. Sec. 1, Ch. 89, L. 1979.

69-12-506 through 69-12-510 reserved.

69-12-511. Procedure to recover excess charges. (1) Any sum or amount of money paid to any motor carrier in excess of the rates, fares, or charges established for such service by the commission may be recovered from such carrier by the person or shipper who paid the same in any action brought in the district court of the county in which such payment was made. Any such action must be brought within 2 years from the date of such payment. No contract or agreement, written or otherwise, between such person or shipper and any motor carrier shall be admissible in evidence for the purpose of showing a waiver of the right given by this section.

(2) If upon the trial of such action it shall satisfactorily appear to the court or jury that such overcharge was willfully made, the person or shipper bringing the said action shall be awarded damages in treble the amount of such excess or overcharge, together with the costs and expenses of such action, including a reasonable attorney's fee, to be taxed and collected as other costs in the action.

History: En. Sec. 6, Ch. 201, L. 1961; R.C.M. 1947, 8-104.6.

Part 6

Carrier Agreements

69-12-601. Carrier agreements. (1) Any carrier, as defined in 69-12-101, which is a party to an agreement between or among two or more carriers relating to rates, fares, classifications, divisions, allowances, or charges (including charges between carriers and compensation paid or received for the use of facilities and equipment) or rules pertaining thereto or procedures for the joint consideration, initiation, or establishment thereof may, under such rules as the commission prescribes, apply to the public service commission for approval of the agreement. The commission shall by order approve any agreement if approval thereof is not prohibited by 69-12-602. The approval of the commission shall be granted only upon such terms and conditions as the commission may prescribe as necessary to enable it to grant its approval in accordance with this subsection.

(2) Each conference, bureau, committee, or other organization established or continued pursuant to any agreement approved by the commission and the provisions of this section shall maintain such accounts, records, files, and memoranda and shall submit to the commission such reports as may be prescribed by the commission. All such accounts, records, files, and memoranda shall be subject to inspection by the commission or its duly authorized representative.

History: En. 8-103.4 by Sec. 1, Ch. 288, L. 1975; amd. Sec. 25, Ch. 518, L. 1977; R.C.M. 1947, 8-103.4(1), (2).

69-12-602. Limitations on carrier agreements. The commission may not approve under 69-12-601 any agreement:

(1) between a carrier by highway and a carrier by rail unless it finds that such agreement is of the character described in 69-12-601 and is limited to matters relating to the transportation under joint rates or over through routes;

(2) which it finds is an agreement with respect to pooling or division of traffic, service, or earnings;

(3) which establishes a procedure for the determination of any matter through joint consideration unless it finds that under the agreement there is accorded to each party the free and unrestrained right to take independent action either before or after any determination arrived at through such procedure.

History: En. 8-103.4 by Sec. 1, Ch. 283, L. 1975; amd. Sec. 25, Ch. 518, L. 1977; R.C.M. 1947, 8-103.4(3) thru (5).

69-12-603. Investigation of operation under agreement. The commission may, upon complaint or upon its own initiative without complaint, investigate and determine whether any agreement previously approved by it under 69-12-601 or any terms or conditions upon which such approval was granted are not in conformity with 69-12-601 and 69-12-602 or whether any such terms or conditions are not necessary for the purpose of conformity with 69-12-601 and 69-12-602. After such investigation, the commission may by order terminate or modify its approval of such agreement if it finds such action necessary to insure conformity with 69-12-601 and 69-12-602 and may modify the terms and conditions upon which such approval was granted to the extent it finds necessary to insure conformity with 69-12-601 and 69-12-602 or to the extent it finds its terms and conditions unnecessary to insure such conformity. The effective date of any order terminating or modifying approval or modifying terms and conditions may be postponed for such period as the commission determines is reasonably necessary to avoid undue hardship.

History: En. 8-103.4 by Sec. 1, Ch. 283, L. 1975; amd. Sec. 25, Ch. 518, L. 1977; R.C.M. 1947, 8-103.4(6).

69-12-604. Hearing required on matters relating to agreements. No order may be entered under 69-12-601 or 69-12-603 except after interested parties have been afforded reasonable opportunity for hearing.

History: En. 8-103.4 by Sec. 1, Ch. 283, L. 1975; amd. Sec. 25, Ch. 518, L. 1977; R.C.M. 1947, 8-103.4(7).

69-12-605. Relationship of carrier agreements and antitrust laws. (1) The parties to any agreement approved by the commission under 69-12-601 and other persons are, if the approval of such agreement is not prohibited by 69-12-602, hereby exempted from Montana antitrust laws with respect to such agreement, including Title 30, chapter 14, part 2, or any other statutes prohibiting monopolies, price fixing, or restraint of trade.

(2) Any action of the commission under 69-12-601 through 69-12-603 in approving an agreement, in denying an application for such approval, in terminating or modifying its approval of an agreement, in prescribing terms and conditions upon which its approval is to be granted, or in modifying such terms and conditions shall be construed as having effect solely with reference to the applicability of subsection (1).

History: En. 8-103.4 by Sec. 1, Ch. 283, L. 1975; amd. Sec. 25, Ch. 518, L. 1977; R.C.M. 1947, 8-103.4(8), (9).

69-12-606 through 69-12-610 reserved.

69-12-611. Leasing of power equipment. (1) All Class A, B, C, and D carriers subject to the jurisdiction of the commission may lease power equipment for the purpose of performing transportation movements within the state. The leasing of such power units must be in writing and effective only upon specific approval of the commission. Movement of such leased units without prior approval of the commission is prohibited.

(2) All leases must contain:

(a) the full names and addresses of negotiating parties;

(b) a complete description of each vehicle involved;

(c) provision that the sole possession, responsibility, control, and direction of each vehicle and its driver resides with the lessee for the entire term of the lease;

(d) provision that the lessee assumes full responsibility for all regulatory fees;

(e) amount of compensation to be paid for use of the vehicle while under the lease and the method by which such compensation is determined;

(f) the renewal conditions of the lease, if any; and

(g) the term length of the lease.

(3) A copy of the lease, certified by the commission, must be maintained in each leased vehicle at all times. Each power unit so leased must display in a conspicuous place on both sides of such vehicle the identity and address of the lessor and lessee and the certificate number under which the power unit is operating.

(4) The leasing of power units by an authorized carrier to a noncertificated carrier is prohibited.

History: **En. 8-103.1 by Sec. 1, Ch. 105, L. 1969; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-103.1; amd. Sec. 2, Ch. 352, L. 1979.**

69-12-612. Interchange of equipment. (1) Common carriers authorized by the commission may enter into interchange agreements with other authorized common carriers providing for the interchange of equipment. Such agreements must be joint applications made to the commission by the carriers affected. To be approved by the commission, the interchange must take place at a fixed terminal where the carriers' routes intersect. Manifests, waybills, or agreements and all shipping data must be in the possession of the operator of the interchanged equipment. When an interchange has been authorized, such equipment shall be operated only by the certificate holder over whose route such equipment is being operated.

(2) Interchange agreements between Class C contract carriers is prohibited.

History: **En. 8-103.2 by Sec. 1, Ch. 106, L. 1969; R.C.M. 1947, 8-103.2.**

CHAPTER 13

PIPELINE CARRIERS

Part 1 — General Provisions

Section
69-13-101. Common carrier pipeline.
69-13-102. Scope of chapter — enforcement.
69-13-103. Right to construct pipelines.
69-13-104. Use of power of eminent domain.
69-13-105. Violations.

Part 2 — Role of Commission

69-13-201. Establishment of rates and operating rules.
69-13-202. Assumption of validity of commission orders.
69-13-203. Investigatory and enforcement authority of commission.

Part 3 — Requirements for Pipeline Carriers

69-13-301. Records and reports.
69-13-302. Connection and interchange facilities.
69-13-303. Prohibition of discrimination in rates or service.

Chapter Compiler's Comments

Interim Study: HJR 27 and HJR 33 (1981) requested an interim study of transportation in Montana. The Legislative Council designated the Joint Subcommittee on Transportation to conduct the study.

Part 1

General Provisions

69-13-101. Common carrier pipeline. (1) The following are hereby declared to be common carriers and subject to the provisions of this chapter:

every person, firm, corporation, limited partnership, joint-stock association, or association of any kind whatever:

(a) owning, operating, or managing any pipeline or any part of any pipeline within the state for the transportation of crude petroleum, coal, or the products thereof to or for the public for hire or engaging in the business of transporting crude petroleum, coal, or the products thereof by pipelines;

(b) owning, operating, or managing any pipeline or any part of any pipeline for the transportation of crude petroleum, coal, or the products thereof to or for the public for hire, which pipeline is constructed or maintained upon, along, over, or under any public road or highway;

(c) owning, operating, or managing any pipeline or any part of any pipeline for transportation to or for the public for hire of crude petroleum, coal, or the products thereof, which pipeline is or may be constructed, operated, or maintained across, upon, along, over, or under the right-of-way of any railroad, corporation, or other common carrier required by law to transport crude petroleum, coal, or the products thereof as a common carrier;

(d) owning, operating, or managing or participating in ownership, operation, or management, under lease, contract of purchase, agreement to buy or sell, or other agreement or arrangement of any kind whatsoever, any pipeline or any part of any pipeline for the transportation from any oil field, coal mine or field, or place of production within the state to any distributing, refining, or marketing center or reshipping point thereof, within this state, of crude petroleum, coal, or the products thereof, bought of others; or

(e) made a common carrier by or under the terms of contract with or in pursuance of the law of the United States.

(2) The provisions of this chapter shall not apply to those pipelines which are limited in their use to the wells, stations, plants, and refineries of the owner and which are not a part of the pipeline transportation system of any common carrier, as herein defined; nor shall such provisions apply to any property of such a common carrier which is not a part of or necessarily incident to its pipeline transportation system.

History: En. Sec. 1, Ch. 8, Ex. L. 1921; re-en. Sec. 3848, R.C.M. 1921; re-en. Sec. 3848, R.C.M. 1935; amd. Sec. 1, Ch. 190, L. 1955; amd. Sec. 1, Ch. 170, L. 1963; R.C.M. 1947, 8-201.

69-13-102. Scope of chapter — enforcement. (1) It is declared that the operation of these pipelines, to which this chapter applies, for the transportation of crude petroleum, coal, or the products thereof, in connection with the purchase or purchase and sale of such crude petroleum, coal, or the products thereof, is a business in mode of the conduct of which the public is interested and as such is subject to regulation by law. The business of purchasing or of purchasing and selling crude petroleum, coal, or the products thereof, using in connection with such business a pipeline of the class subject to this chapter to transport the crude petroleum, coal, or the products thereof so bought or sold shall not be conducted unless such pipeline so used in connection with such business is a common carrier within the purview of this law and subject to the jurisdiction herein conferred upon the commission.

(2) It shall be the duty of the attorney general to enforce this provision by injunction or other adequate remedy.

History: En. Sec. 2, Ch. 8, Ex. L. 1921; re-en. Sec. 3849, R.C.M. 1921; re-en. Sec. 3849, R.C.M. 1935; amd. Sec. 2, Ch. 190, L. 1955; amd. Sec. 2, Ch. 170, L. 1963; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-202.

69-13-103. Right to construct pipelines. (1) The right to lay, maintain, and operate pipelines, together with telegraph and telephone lines incidental to and designed for use only in connection with the operation of such lines, or along, across, or under any public stream or highway in this state is hereby conferred upon all persons, firms, limited partnerships, joint-stock associations, or corporations coming within any of the definitions of common carrier pipelines as hereinbefore made. This right to run along, across, or over any public road or highway, as provided for, can only be exercised upon condition that the traffic thereon not be interfered with and that such road or highway be promptly restored to its former condition of usefulness. The restoration of the road or highway is subject also to the supervision of the county commissioners of the county in which said highway is situated.

(2) Any person, firm, limited partnership, joint-stock association, or corporation may acquire the right to construct pipelines and such incidental telephone and telegraph lines along, across, or over any public road or highway in this state by filing with the commission an acceptance of the provisions of this law, expressly agreeing in writing that in consideration of the right so acquired, it shall be and become a common carrier pipeline, subject to the duties and obligations conferred or imposed in this chapter. In the exercise of the privileges herein conferred, such pipelines shall compensate the county for any damage done to such public road in the laying of pipelines or telegraph or telephone lines along or across the same. Nothing herein shall be construed to grant any pipeline company the right to use any public street or alley in any incorporated city or town except by express permission from the city or governing authority thereof.

History: En. Sec. 3, Ch. 8, Ex. L. 1921; re-en. Sec. 3850, R.C.M. 1921; re-en. Sec. 3850, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-203(part).

69-13-104. Use of power of eminent domain. Every person, firm, corporation, limited partnership, joint-stock association, or association of any kind mentioned in this chapter, which shall have filed with the commission its acceptance of the provisions of this chapter, is hereby granted the right and power of eminent domain in the exercise of which he, it, or they may enter upon and condemn the land, rights-of-way, easements, and property of any person or corporation necessary for the construction, maintenance, or authorization of his, its, or their common carrier pipeline. The manner and method of such condemnation and the assessment and payment of the damages therefor shall be the same as is provided by law in the case of railroads.

History: En. Sec. 3, Ch. 8, Ex. L. 1921; re-en. Sec. 3850, R.C.M. 1921; re-en. Sec. 3850, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-203(part).

69-13-105. Violations. (1) Any common carrier as herein defined who shall violate any provisions of this chapter or who shall fail to perform any duty herein imposed or any valid order of the commission, when not stayed or suspended by order of court, shall be subject to a penalty of not less than $100 or more than $1,000 for each offense. Such penalty shall be recoverable at suit of the attorney general of Montana in the name of the state and for its use.

(2) For the willful violation of any of the provisions herein forbidding discrimination on the part of common carriers, it is hereby provided that the owners, officers, agents, or employees of such carriers who may be guilty

thereof shall be deemed guilty of a misdemeanor. Each violation of any of such provisions shall be deemed a separate and distinct offense, and upon conviction thereof the party violating same shall be fined in a sum of not less than $50 or more than $1,000 and may be further punished by confinement in the county jail for not less than 10 days or more than 6 months.

(3) Actual damages may also be recovered by and for the use of any person, corporation, or association of persons against whom there shall have been an unlawful discrimination as herein defined. Such suit shall be brought in the name of and for the use of party aggrieved and may be maintained in any court of proper jurisdiction, having due regard to the ordinary statutes of venue.

History: En. Sec. 9, Ch. 8, Ex. L. 1921; re-en. Sec. 3856, R.C.M. 1921; re-en. Sec. 3856, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-209.

Part 2

Role of Commission

69-13-201. Establishment of rates and operating rules. (1) The commission shall have the power to establish and enforce rates of charges and regulations for gathering, transporting, loading, and delivering crude petroleum, coal, or the products thereof by such common carrier in this state and for the use of storage facilities necessarily incident to such transportation and to prescribe and enforce rules for the government and control of such common carriers in respect to their pipelines and receiving, transferring, and loading facilities. It shall be its duty to exercise such power upon petition by any person showing a substantial interest in the subject.

(2) No order establishing or prescribing rates and rules shall be made except after hearing and at least 10 days' and not more than 30 days' notice to the person, firm, corporation, partnership, joint-stock association, or association owning or controlling and operating the pipeline or pipelines affected.

(3) In the event any rate shall be filed by any pipeline and complaint against the same or petition to reduce the same shall be filed by any shipper and such complaint be sustained, in whole or in part, all shippers who shall have paid the rates so filed by the pipeline shall have the right to reparation or reimbursement of all excess in transportation charges so paid, over and above the proper rate as finally determined, on all shipments made after the date of the filing of such complaint.

History: En. Sec. 4, Ch. 8, Ex. L. 1921; re-en. Sec. 3851, R.C.M. 1921; re-en. Sec. 3851, R.C.M. 1935; amd. Sec. 3, Ch. 190, L. 1955; amd. Sec. 3, Ch. 170, L. 1963; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-204.

69-13-202. Assumption of validity of commission orders. Until set aside or vacated by some decree or order of a court of competent jurisdiction, all orders of the commission as to any matter within its jurisdiction shall be accepted as prima facie evidence of their validity.

History: En. Sec. 5, Ch. 8, Ex. L. 1921; re-en. Sec. 3852, R.C.M. 1921; re-en. Sec. 3852, R.C.M. 1935; amd. Sec. 4, Ch. 190, L. 1955; amd. Sec. 4, Ch. 170, L. 1963; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-205(part).

69-13-203. Investigatory and enforcement authority of commission. The commission shall have the power and authority to hear and determine complaints, to require attendance of witnesses, and to institute suits and sue out such writs and process as may be necessary for the enforcement of its orders.

History: En. Sec. 6, Ch. 8, Ex. L. 1921; re-en. Sec. 3853, R.C.M. 1921; re-en. Sec. 3853, R.C.M. 1935; amd. Sec. 5, Ch. 190, L. 1955; amd. Sec. 5, Ch. 170, L. 1963; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-206(part).

Part 3

Requirements for Pipeline Carriers

69-13-301. Records and reports. (1) Such common carriers of crude petroleum, coal, or the products thereof shall make and publish their tariffs under such rules as may be prescribed by said commission. The commission shall require them to make reports and may investigate their books and records kept in connection with such business.

(2) The commission shall require of such common carrier pipelines monthly reports, duly verified under oath, of the total quantities of crude petroleum, coal, or the products thereof owned by such pipelines, of that held by them in storage for others, and of their unfilled storage capacity. No publicity shall be given by the commission to the reports as to stock of crude petroleum, coal, or the products thereof on hand of any particular pipeline, but the commission in its discretion may make public the aggregate amounts held by all the pipelines making such reports and of their aggregate storage capacity.

History: En. Sec. 6, Ch. 8, Ex. L. 1921; re-en. Sec. 3853, R.C.M. 1921; re-en. Sec. 3853, R.C.M. 1935; amd. Sec. 5, Ch. 190, L. 1955; amd. Sec. 5, Ch. 170, L. 1963; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-206(part).

69-13-302. Connection and interchange facilities. (1) Every common carrier shall exchange crude petroleum tonnage, coal tonnage, or petroleum or coal products tonnage with each like common carrier. The commission shall have the power to require such connections and facilities for the interchange of such tonnage to be made at every locality reached by both pipelines whenever a necessity therefor exists, subject to such rates and regulations as may be made by the commission. Any such common carrier under like rules shall be required to install and maintain facilities for the receipt and delivery of crude petroleum, coal, or the products thereof of patrons at all points on such pipeline.

(2) No carrier shall be required to receive or transport any crude petroleum, coal, or the products thereof except such as may be marketable under rules to be prescribed by the commission, which they are hereby empowered and required to prescribe. The commission is also empowered and required to make rules for the ascertainment of the amount of water and other foreign matter in crude oil, coal, or the products thereof tendered for transportation, for deduction therefor, and for the amount of deduction to be made for temperature, leakage, and evaporation.

(3) The recital herein of particular powers on the part of said commission shall not be construed to limit the general powers conferred by this chapter.

History: En. Sec. 5, Ch. 8, Ex. L. 1921; re-en. Sec. 3852, R.C.M. 1921; re-en. Sec. 3852, R.C.M. 1935; amd. Sec. 4, Ch. 190, L. 1955; amd. Sec. 4, Ch. 170, L. 1963; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-205(part).

69-13-303. Prohibition of discrimination in rates or service. (1) Except as provided in subsection (2), no such common carrier in its operations as such shall discriminate between or against shippers in regard to facilities furnished, service rendered, or rates charged under same or similar circumstances in the transportation of crude petroleum, coal, or the products thereof; nor shall there be any discrimination in the transportation of crude petroleum, coal, or the products thereof produced or purchased by itself directly or indirectly. In this connection the pipeline shall be considered as a shipper of the crude petroleum, coal, or the products thereof produced or purchased by itself directly or indirectly and handled through its facilities. No such carrier in such operation shall directly or indirectly charge, demand, collect, or receive from any one a greater or lesser compensation for any service rendered than from another for a like and contemporaneous service. Subject to the provisions of this chapter and the rules which may be prescribed by the commission, every such common carrier shall receive and transport crude petroleum or coal delivered to it for transportation and shall so receive and transport the same and perform its other duties with respect thereto without discrimination.

(2) The provisions of subsection (1) shall not limit the right of the commission to prescribe rates and regulations different from or to some places from other rates or regulations for transportation from or to other places, as it may determine; nor shall any carrier be guilty of discrimination when obeying any order of the commission. When there shall be offered for transportation more crude petroleum, coal, or the products thereof than can be immediately transported, the same shall be equitably apportioned. The commission may make and enforce general or specific regulations in this regard. No such common carrier shall at any time be required to receive for shipments exceeding 3,000 barrels of petroleum or the products thereof in any one day from any person, firm, corporation, or association of persons.

History: Ap. p. Sec. 7, Ch. 8, Ex. L. 1921; re-en. Sec. 3854, R.C.M. 1921; re-en. Sec. 3854, R.C.M. 1935; amd. Sec. 6, Ch. 190, L. 1955; amd. Sec. 6, Ch. 170, L. 1963; amd. Sec. 20, Ch. 315, L. 1974; Sec. 8-207, R.C.M. 1947; Ap. p. Sec. 10, Ch. 8, Ex. L. 1921; re-en. Sec. 3857, R.C.M. 1921; re-en. Sec. 3857, R.C.M. 1935; amd. Sec. 7, Ch. 170, L. 1963; amd. Sec. 20, Ch. 315, L. 1974; Sec. 8-210, R.C.M. 1947; R.C.M. 1947, 8-207, 8-210.

CHAPTER 14

RAILROADS

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Chapter Compiler's Comments

Interim Study: HJR 27 and HJR 33 (1981) requested an interim study of transportation in Montana. The Legislative Council designated the Joint Subcommittee on Transportation to conduct the study.

Part 1

Role of Commission

69-14-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Paralleling" means the situation where the main tracks of parallel lines of railroad or railway are not more than 2,000 feet apart when measured from center to center.

(2) "Railroad" means a corporation, company, or individual owning or operating a railroad in whole or in part in this state. The term also includes express companies and sleeping-car companies.

(3) "Transportation" includes instrumentalities of shipment or carriage.

History: (1)En. Sec. 1, Ch. 105, L. 1913; re-en. Sec. 3835, R.C.M. 1921; re-en. Sec. 3835, R.C.M. 1935; Sec. 72-157, R.C.M. 1947; (2), (3)En. Sec. 11, Ch. 37, L. 1907; Sec. 4373, Rev. C. 1907; re-en. Sec. 3792, R.C.M. 1921; re-en. Sec. 3792, R.C.M. 1935; Sec. 72-114, R.C.M. 1947; amd. and redes. 72-101.1 by Sec. 12, Ch. 315, L. 1974; Sec. 72-101.1, R.C.M. 1947; R.C.M. 1947, 72-101.1(part), 72-157; amd. Sec. 21, Ch. 43, L. 1979.

69-14-102. Application. This chapter applies to all persons, firms, or companies, incorporated or otherwise, that do business as common carriers on any of the lines of railroad in this state.

History: En. Sec. 11, Ch. 37, L. 1907; Sec. 4373, Rev. C. 1907; re-en. Sec. 3792, R.C.M. 1921; re-en. Sec. 3792, R.C.M. 1935; Sec. 72-114, R.C.M. 1947; amd. and redes. 72-101.1 by Sec. 12, Ch. 315, L. 1974; R.C.M. 1947, 72-101.1(part); amd. Sec. 22, Ch. 43, L. 1979.

69-14-103. Interpretation. This chapter shall not have the effect of releasing or waiving any right of action by the state or any person for any right, penalty, or forfeiture which may arise under any law of this state. All penalties accruing under this part are cumulative to each other, and a suit for or recovery of one is not a bar to the recovery of any other penalty.

History: En. Sec. 35, Ch. 37, L. 1907; Sec. 4398, Rev. C. 1907; re-en. Sec. 3817, R.C.M. 1921; re-en. Sec. 3817, R.C.M. 1935; R.C.M. 1947, 72-140; amd. Sec. 23, Ch. 43, L. 1979.

69-14-104 through 69-14-110 reserved.

69-14-111. General supervision of railroads. The commission shall have the general supervision of all railroads, express companies, car companies, sleeping-car companies, and freight and freight-line companies and any common carrier engaged in the transportation of passengers or property in this state, in all matters appertaining to the duty of said commission and within its power and authority under the provisions of this chapter.

History: En. Sec. 16, Ch. 37, L. 1907; Sec. 4378, Rev. C. 1907; re-en. Sec. 3797, R.C.M. 1921; re-en. Sec. 3797, R.C.M. 1935; R.C.M. 1947, 72-119(part).

69-14-112. Investigatory authority. (1) The commission shall investigate any alleged neglect or violation of the laws of the state by any railroad or other company above specified doing business therein or by the officers, agents, or employees thereof. The commission shall examine and inspect or cause to be examined and inspected all books, records, files, and papers of the persons and companies specified above, insofar as the same may be pertinent to any matter under investigation before the commission, and shall hear and take testimony in the progress of any inquiry or investigation authorized by this chapter.

(2) The commission, or some members thereof to be deputed by it, shall investigate and make inquiry into every accident occurring in the operation of any railroad in this state resulting in death, injury to any person of such gravity as to require the attention of a physician or surgeon, or the destruction of property greater in value than $2,000. The testimony taken on any such hearing shall be transcribed and filed in the office of the commission.

History: En. Secs. 16, 16a, Ch. 37, L. 1907; Secs. 4378, 4379, Rev. C. 1907; re-en. Secs. 3797, 3798, R.C.M. 1921; re-en. Secs. 3797, 3798, R.C.M. 1935; R.C.M. 1947, 72-119(part), 72-120; amd. Sec. 24, Ch. 43, L. 1979.

69-14-113. Attendance and examination of witnesses. (1) The commission in making any examination or investigation provided for in this chapter may issue subpoenas for the attendance of witnesses by such rules as it may prescribe. Witness fees shall be the same as those provided for witnesses in civil actions before the district court, as provided in 26-2-501. However, no witness furnished with free transportation may receive mileage for the distance he may have traveled on such free transportation. No person may be excused from attending or testifying or producing any books, papers, documents, or any thing or things before any court or magistrate or commissioner or board upon any investigation, proceeding, or trial under the provisions of this chapter or for any violation of any of them upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to convict him of a crime or subject him to a penalty or forfeiture. No person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may so testify or produce evidence, and no testimony or evidence so given or produced shall be received against him upon any civil or criminal proceeding, action, or investigation.

(2) (a) The process issued by the commission shall be under seal and extend to all parts of the state. The commission shall have power to issue process in like manner as courts of record. Such process may be served by any person authorized to serve process of courts of record or by any person appointed by the commission for such purpose.

(b) In the event the process issued by the commission is a subpoena for the attendance of a witness and he fails, neglects, or refuses to obey the same, the commission is hereby authorized to file a petition with any district court in the state, setting up the facts and the necessity of having the witness appear in the trial. The court shall thereupon summarily direct that a subpoena be issued out of the court requiring the attendance of any person as a witness before the court. The commission may thereupon examine such witness before the court, under oath, respecting any inquiry or investigation being made by the commission pursuant to the provisions of this chapter. The court shall likewise, when any petition is filed stating the necessity therefor, order the production by any person or corporation, for examination in the court, of any books, papers, records, or files necessary or pertinent to any inquiry or investigation then being made by the commission.

History: **En. Secs. 10, 18, Ch. 37, L. 1907; Secs. 4372, 4381, Rev. C. 1907; re-en. Secs. 3791, 3800, R.C.M. 1921; re-en. Secs. 3791, 3800, R.C.M. 1935; R.C.M. 1947, 72-113, 72-122; amd. Sec. 25, Ch. 43, L. 1979; amd. Sec. 1, Ch. 87, L. 1979.**

69-14-114. Investigation of existing rates, classifications, and rules. The commission may, on its own motion or on the complaint by a shipper or other interested person, investigate any rate, classification, or rule approved and in effect for transportation of freight by any railroad within the state. The commission must, within 60 days after the commencement of an investigation on the commission's initiative or after the filing with such commission of a complaint by a shipper or other interested person, proceed to investigate and determine the justness and reasonableness of any classification, rate, charge, toll, regulation, or order made by said commission.

History: **En. Sec. 15, Ch. 37, L. 1907; Sec. 4377, Rev. C. 1907; amd. Sec. 1, Ch. 176, L. 1921; re-en. Sec. 3796, R.C.M. 1921; re-en. Sec. 3796, R.C.M. 1935; amd. Sec. 1, Ch. 227, L. 1971; amd. Sec. 1, Ch. 429, L. 1973; R.C.M. 1947, 72-118(part).**

69-14-115. Investigation, enforcement, and report concerning railroad safety laws. (1) The commission shall:

(a) make inquiry into the observance by all railroads within this state of the laws of the United States and of Montana intended to safeguard the lives of the employees of persons or corporations engaged in operating the same;

(b) lay complaint before the proper state or federal officer, of any infraction of any of such laws; and

(c) prosecute before the proper court or tribunal any person guilty of violation of the penal provisions thereof.

(2) The commission shall in the annual report required by 2-7-102 set out what effort it has made to carry out the provisions of this section, with the result thereof, and in detail what steps it has taken to prosecute any violations of any such acts of which it has secured information. A copy of this annual report shall be mailed to the secretary of the department of transportation.

History: **(1)En. Sec. 1, Ch. 115, L. 1913; re-en. Sec. 3819, R.C.M. 1921; re-en. Sec. 3819, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; Sec. 72-142, R.C.M. 1947; (2)En. Sec. 2, Ch. 115, L. 1913; re-en. Sec. 3820, R.C.M. 1921; re-en. Sec. 3820, R.C.M. 1935; amd. Sec. 1, Ch. 124, L. 1971; Sec. 72-143, R.C.M. 1947; R.C.M. 1947, 72-142, 72-143; amd. Sec. 26, Ch. 43, L. 1979.**

69-14-116. General protection of health and safety on railroads. (1) The commission shall have full authority:

(a) after notice and hearing, to make and enforce rules providing for the installation on and equipment of trains, cars, or engines with safety appliances and providing for sanitation and adequate shelter as it affects the health of all railroad employees, including but not limited to trainmen, enginemen, yardmen, maintenance-of-way employees, highway crossing watchmen, and clerical, platform, freight house, and express employees; and

(b) to inspect the same and enforce regulations with regard thereto.

(2) Such inspection, rules, and regulations to be from time to time coextensive with the requirements of and in conformity to the provisions of the acts of congress and rules and regulations of the interstate commerce commission and the department of transportation, as then effective.

History: En. Sec. 1, Ch. 136, L. 1909; re-en. Sec. 3827, R.C.M. 1921; re-en. Sec. 3827, R.C.M. 1935; amd. Sec. 1, Ch. 63, L. 1959; amd. Sec. 2, Ch. 124, L. 1971; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-150.

69-14-117. Provision of adequate accommodations and service. The commission shall have the power and it shall be its duty to compel any and all railroads subject hereto to provide, maintain, and operate sufficient train service, both freight and passenger, for the proper and reasonable accommodation of the public and to provide and maintain suitable waiting rooms for passengers and suitable rooms for freight and baggage at all stations.

History: En. Sec. 19, Ch. 37, L. 1907; Sec. 4382, Rev. C. 1907; re-en. Sec. 3801, R.C.M. 1921; re-en. Sec. 3801, R.C.M. 1935; R.C.M. 1947, 72-123.

69-14-118. Maintenance of stations where several rail lines come together. (1) Whenever the line of one railroad or railway shall cross, intersect, or parallel (overhead, at grade, or otherwise) the railroad or railway of another company or corporation, the commission shall have power and authority, in addition to all other powers hereafter vested in said commission, after notice and hearing, to order and compel the installation of suitable platforms and station houses for the convenience of passengers desiring to transfer from one road to the other and for the transfer of passengers, baggage, or freight, whenever the same shall be ordered by the commission. Such company or corporation shall, when so ordered by the commission, keep such passenger station warmed, lighted, and opened to the ingress and egress of all passengers a reasonable time before the arrival and after the departure of such trains as accommodate such station, carrying passengers on such railroad or railway. Said railroad or railway companies crossing, intersecting, or paralleling (overhead, at grade, or otherwise) shall stop such trains at said station house so located for the transfer of baggage, passengers, and freight, so as to furnish reasonable facilities for that character of a station when so ordered by the commission.

(2) The expense of construction and maintenance of such station house and platform shall be paid by such corporations in such proportions as they may agree, and if they fail to agree, as may be fixed by order of the commission.

History: En. Sec. 1, Ch. 105, L. 1913; re-en. Sec. 3834, R.C.M. 1921; re-en. Sec. 3834, R.C.M. 1935; amd. Sec. 20. Ch. 315, L. 1974; R.C.M. 1947, 72-156(part).

69-14-119. Connection of lines where several rail lines come together. (1) Such corporation connecting by crossing, intersecting, or paralleling (overhead, at grade, or otherwise) shall also, when so ordered, after notice and hearing by the commission, unite and connect the tracks of said several corporations so as to permit the transfer, from the tracks of said several corporations to the tracks of each other, of loaded and unloaded cars designed for transportation on both roads; provided, however, that no such union or connection shall be ordered except where and when necessary to properly serve the public.

(2) The expense of construction and maintenance shall be apportioned and the material to be used and the route to be followed shall be determined by such corporations as they may agree, and in the event that they fail to agree, as may be fixed by order of the commission; and the expense thus incurred by the commission shall be paid by the railroad or railway companies jointly interested on such basis as the commission may order.

History: En. Sec. 1, Ch. 105, L. 1913; re-en. Sec. 3834, R.C.M. 1921; re-en. Sec. 3834, R.C.M. 1935; amd. Sec. 20. Ch. 315, L. 1974; R.C.M. 1947, 72-156(part).

69-14-120. Violations of provisions relating to rails coming together. Any railroad or railway company and its officers or agents who shall refuse or fail to comply with the provisions of 69-14-118 or 69-14-119 or any order or rule relative thereto made by the commission shall be subject to a fine of not less than $25 or more than $50. Each day of such refusal or failure shall be deemed a separate offense and shall be subject to the penalty herein prescribed, such fine to be recovered in a civil action upon complaint of the commission in any court of competent jurisdiction.

History: En. Sec. 7, Ch. 105, L. 1913; re-en. Sec. 3841, R.C.M. 1921; re-en. Sec. 3841, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-163(part).

69-14-121 through 69-14-130 reserved.

69-14-131. Enforcement duties of commission. The commission shall see that the provisions of this chapter and all laws of this state concerning railroads are enforced and obeyed and that violations thereof are promptly prosecuted and penalties due the state therefor recovered and collected. The commission shall report all such violations, with the facts in its possession, to the attorney general or other officer charged with the enforcement of the laws and request him to institute the proper proceedings. All suits between the state and any railroad shall have precedence in all courts over all civil causes, criminal business and original proceedings in the supreme court excepted.

History: En. Sec. 34, Ch. 37, L. 1907; Sec. 4397, Rev. C. 1907; re-en. Sec. 3816, R.C.M. 1921; re-en. Sec. 3816, R.C.M. 1935; R.C.M. 1947, 72-139(part); amd. Sec. 27, Ch. 43, L. 1979.

69-14-132. Legal assistance for commission. The attorney general is the attorney of the commission, and the county attorney of every county in the state shall, on the request and at the direction of the attorney general, assist in all cases, proceedings, and investigations undertaken by the commission under this chapter in his own county. However, the commission may employ special counsel, with the approval of the attorney general, to assist in any case, matter, proceeding, or investigation instituted under this chapter. The attorney general, upon direction of the commission, and the county attorney of each county in this state, upon direction of the attorney general, shall institute and prosecute and appear and defend any action or proceeding arising under this chapter. All suits and proceedings filed in any court of this state under this chapter shall have precedence over all other business in the court except criminal business and original proceedings in the supreme court.

History: En. Sec. 20, Ch. 37, L. 1907; Sec. 4383, Rev. C. 1907; re-en. Sec. 3802, R.C.M. 1921; re-en. Sec. 3802, R.C.M. 1935; amd. Sec. 13, Ch. 315, L. 1974; R.C.M. 1947, 72-124; amd. Sec. 28, Ch. 43, L. 1979.

69-14-133. Collection and disposition of penalties and forfeitures. Unless otherwise provided, all penalties and forfeitures incurred, levied, and made under the provisions of this chapter shall be collected by the commission and paid over to the state treasurer and credited to the general fund. Should the commission fail or refuse to institute appropriate action for the recovery of any penalty or forfeiture provided for herein for the space of 60 days after notice of the cause of complaint by an aggrieved person or shipper, such person or shipper may institute and prosecute such action in the name of the state against such railroad, in the same manner as could the commission.

History: En. Sec. 30, Ch. 37, L. 1907; Sec. 4393, Rev. C. 1907; re-en. Sec. 3812, R.C.M. 1921; re-en. Sec. 3812, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-135; amd. Sec. 29, Ch. 43, L. 1979.

69-14-134. Court enforcement of commission actions. (1) The district court has jurisdiction to enforce, by proper decree, injunction, or order, the rates, classifications, rulings, orders, and regulations made or established by the commission under the provisions of this chapter. The proceeding therefor shall be by equitable action in the name of the state and shall be instituted by the attorney general or county attorney, whenever advised by the commission that any railroad, railway, or common carrier is violating or refusing to comply with any such rule, order, rate, classification, or regulation made by the commission and applicable to such railroad, railway, or common carrier. Such proceedings shall have precedence over all other business in such courts except criminal business.

(2) In any action the burden of proof shall rest upon the defendant, who must show by clear and satisfactory evidence that the rule, order, regulation, rate, or classification involved is unreasonable and unjust as to it. If, in such action, it is the decision of the court that the rule, regulation, order, rate, or classification is not unreasonable or unjust and that in refusing compliance therewith the railroad, railway, or common carrier is thereby failing or omitting the performance of any duty, debt, or obligation, the court shall decree a mandatory and perpetual injunction compelling obedience to and compliance with the rule, regulation, order, rate, or classification by the defendant and its officers, agents, servants, and employees and may grant such other relief as is just and proper. Any violation of such decree renders the defendant and any officer, agent, servant, or employee of the defendant who is in any manner instrumental in such violation guilty of contempt, punishable by a fine not exceeding $1,000 for each offense or by imprisonment of the person guilty of contempt until he sufficiently purges himself therefrom. Such decree remains in effect until the rule, regulation, order, rate, or classification shall be modified or vacated by the commission. Nothing contained herein shall be construed to deprive either party to such proceedings of the right to trial by jury as provided by the seventh amendment to the constitution of the United States or as provided by the constitution of this state.

(3) An appeal shall lie to the supreme court from the decree in such action, and the cause shall have precedence over all other civil actions of a different nature pending in the supreme court except original proceedings in the supreme court.

History: En. Sec. 24, Ch. 37, L. 1907; Sec. 4387, Rev. C. 1907; re-en. Sec. 3806, R.C.M. 1921; re-en. Sec. 3806, R.C.M. 1935; R.C.M. 1947, 72-128; amd. Sec. 30, Ch. 43, L. 1979.

69-14-135. General right to supreme court review. Appeals may be taken to the supreme court from the judgment of any district court in any action brought under the provisions of this chapter. Such appeals have precedence over all other business except criminal business and original proceedings in such court and shall be heard and determined as are appeals in civil actions.

History: Ap. p. Sec. 25, Ch. 37, L. 1907; Sec. 4388, Rev. C. 1907; re-en. Sec. 3807, R.C.M. 1921; re-en. Sec. 3807, R.C.M. 1935; Sec. 72-129, R.C.M. 1947; Ap. p. Sec. 6, Ch. 136, L. 1909; re-en. Sec. 3831, R.C.M. 1921; re-en. Sec. 3831, R.C.M. 1935; Sec. 72-154, R.C.M. 1947; Ap. p. Sec. 5, Ch. 105, L. 1913; re-en. Sec. 3839, R.C.M. 1921; re-en. Sec. 3839, R.C.M. 1935; Sec. 72-161, R.C.M. 1947; R.C.M. 1947, 72-129, 72-154, 72-161; amd. Sec. 31, Ch. 43, L. 1979.

69-14-136. Repealed. Sec. 55, Ch. 43, L. 1979.

History: En. Sec. 6, Ch. 105, L. 1913; re-en. Sec. 3840, R.C.M. 1921; re-en. Sec. 3840, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-162.

69-14-137. Violations. If any railroad or other common carrier willfully violates any provision of this chapter, does any other act herein prohibited, or refuses to perform any lawful orders emanating from the commission relating to rates and charges or any other duty enjoined upon it for which a penalty has not been provided, then for every such act or violation it shall pay to the state a penalty of not more than $500.

History: En. Sec. 29, Ch. 37, L. 1907; Sec. 4392, Rev. C. 1907; re-en. Sec. 3811, R.C.M. 1921; re-en. Sec. 3811, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-134; amd. Sec. 32, Ch. 43, L. 1979.

Part 2

Requirements for Railroads

69-14-201. General duties of railroad corporation. Every railroad corporation must:

(1) start and run its cars for the transportation of persons and property at such regular times as it shall fix by public notice;

(2) furnish sufficient accommodations for the transportation of all such passengers and property as, within a reasonable time previous thereto, offer or are offered for transportation at the place of starting, at the junction of other railroads, and at sidings or stopping places established for receiving and discharging way passengers and freight; and

(3) take, transport, and discharge such passengers and property at, from, and to such places on the due payment of tolls, freight, or fare therefor.

History: En. Sec. 971, Civ. C. 1895; re-en. Sec. 4324, Rev. C. 1907; re-en. Sec. 6558, R.C.M. 1921; Cal. Civ. C. Sec. 481; re-en. Sec. 6558, R.C.M. 1935; R.C.M. 1947, 72-602.

69-14-202. Duty to furnish shipping and passenger facilities. (1) Every person, corporation, or association operating a railroad in the state shall maintain and staff facilities for shipment and delivery of freight and shall ship and deliver freight and accommodate passengers in at least one location, preferably the county seat, in each county through which the line of the railway passes and at any point upon the line of such railway where there is a city or town having a population, according to the last federal census, of not less than 1,000; provided, however, that this section shall not require the maintenance and staffing of such facilities in any county or at any city or town in which such facilities were not maintained and staffed on July 1, 1969.

(2) Nothing in this section authorizes the discontinuance of any facility presently established in any city, town, or other location having a population of less than 1,000 without a hearing before the public service commission, as provided by law.

History: En. Sec. 1, Ch. 26, L. 1905; re-en. Sec. 4343, Rev. C. 1907; re-en. Sec. 6582, R.C.M. 1921; re-en. Sec. 6582, R.C.M. 1935; amd. Sec. 1, Ch. 266, L. 1969; amd. Sec. 21, Ch. 315, L. 1974; R.C.M., 72-627; amd. Sec. 33, Ch. 43, L. 1979.

69-14-203. Posting of information concerning train schedules. (1) Every company or corporation managing, operating, or leasing any railroad in this state that is engaged in the transportation of passengers shall place or cause to be placed a bulletin board in a conspicuous place in and about each and every station or depot where an agent, telephone, or telegraph operator is kept. Such railway company or corporation shall, for the information of the traveling public, at least 3 hours before the advertised scheduled time of the arrival of each passenger train stopping upon such route at such station, cause to be posted upon such bulletin board the number of the train, the time such train is due, and the fact whether such train is on scheduled time or not and, if late, how much, and shall indicate at the end of 2 hours thereafter any gain or loss of more than 15 minutes made by such train and thereafter, every 30 minutes any gain or loss of more than 15 minutes made by such train, on such bulletin board at such station, showing at each time indicated how much said train is running behind its scheduled time. Nothing in this section shall be so construed as to compel such railway company or corporation leasing, operating, or managing any railroad in this state to post the number, scheduled time, and lateness of such trains as arriving or departing from such stations aforesaid while there is no such agent, telegraph, or telephone operator or any other person on duty, but immediately after such agent, telegraph, or telephone operator in charge of such station comes on duty, such railway company or corporation shall cause to be indicated on said bulletin board the number of any trains then due or overdue or scheduled to be due within 3 hours, the time any train or trains are due, and how much the trains are running behind their scheduled time. Any such passenger train not more than 10 minutes late shall be deemed to be on time as to the operation of this section. When such station is connected by telephone with the central exchange in any town or city, such railway company or corporation, upon request of such central exchange, shall promptly notify such central exchange as to the time of arrival of such passenger train, giving the same information as is posted on said bulletin board and at the time of said posting.

(2) Every railway company or corporation managing, operating, or leasing any railroad in this state that shall willfully or negligently violate the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $50 or more than $200 for each offense; such action to be prosecuted by the county attorney of the county in which the violation occurs, in the name of the state of Montana.

History: (1)En. Sec. 1, Ch. 67, L. 1917; re-en. Sec. 6584, R.C.M. 1921; re-en. Sec. 6584, R.C.M. 1935; Sec. 72-629, R.C.M. 1947; (2)En. Sec. 2, Ch. 67, L. 1917; re-en. Sec. 6585, R.C.M. 1921; re-en. Sec. 6585, R.C.M. 1935; Sec. 72-630, R.C.M. 1947; R.C.M. 1947, 72-629, 72-630.

69-14-204. Effect of refusal to accept passengers or property. In case of refusal by such corporation or its agents so to take and transport any passengers or property or to deliver the same at the regular appointed places, such corporation must pay to the party aggrieved all damages which are sustained thereby, with costs of suit.

History: En. Sec. 972, Civ. C. 1895; re-en. Sec. 4325, Rev. C. 1907; re-en. Sec. 6559, R.C.M. 1921; Cal. Civ. C. Sec. 482; re-en. Sec. 6559, R.C.M. 1935; R.C.M. 1947, 72-603.

69-14-205. Accommodations for and care to be taken of passengers. (1) Every railroad corporation must furnish on the inside of its passenger cars sufficient room and accommodations for all passengers to whom tickets are sold for any one trip and for all persons presenting tickets entitling them to travel thereon.

(2) When fare is taken for transporting passengers on any baggage, wood, gravel, or freight car, the same care must be taken and the same responsibility is assumed by the corporation as for passengers on passenger cars.

History: En. Sec. 973, Civ. C. 1895; re-en. Sec. 4326, Rev. C. 1907; re-en. Sec. 6560, R.C.M. 1921; Cal. Civ. C. Sec. 483; re-en. Sec. 6560, R.C.M. 1935; R.C.M. 1947, 72-604.

69-14-206. Rules for fare and conduct of passengers. (1) Every railroad corporation must have printed and conspicuously posted on the inside of its passenger cars its rules regarding fare and conduct of its passengers.

(2) In case any passenger is injured on or from the platform of a car or on any baggage, wood, gravel, or freight car, in violation of such printed regulations or in violation of positive verbal instructions or injunctions given to such passenger in person by any officer of the train, the corporation is not responsible for damages for such injuries unless the corporation failed to comply with the provisions of 69-14-205.

History: En. Sec. 974, Civ. C. 1895; re-en. Sec. 4327, Rev. C. 1907; re-en. Sec. 6561, R.C.M. 1921; Cal. Civ. C. Sec. 484; re-en. Sec. 6561, R.C.M. 1935; R.C.M. 1947, 72-605.

69-14-207. Expulsion of passengers refusing to pay fare. If any passenger refuses to pay his fare or to exhibit or surrender his ticket when reasonably requested to do so, the conductor and employees of the corporation may put him and his baggage out of the cars, using no unnecessary force, at any usual stopping place or near any dwelling house, on stopping the train.

History: En. Sec. 975, Civ. C. 1895; re-en. Sec. 4328, Rev. C. 1907; re-en. Sec. 6562, R.C.M. 1921; Cal. Civ. C. Sec. 487; re-en. Sec. 6562, R.C.M. 1935; R.C.M. 1947, 72-606.

69-14-208. Officers and employees of corporation to wear badges. (1) Every conductor, baggage master, engineer, brakeman, or other employee of any railroad corporation employed on a passenger train or at stations for passengers must wear, upon his hat or cap or in some conspicuous place on the breast of his coat, a badge indicating his office or station and the initial letters of the name of the corporation by which he is employed.

(2) No collector or conductor without such badge is authorized to demand or to receive from any passenger any fare, toll, or ticket or exercise any of the powers of his office or station, and no other officer or employee without such badge has any authority to meddle or interfere with any passenger or property.

History: **En. Sec. 976, Civ. C. 1895; re-en. Sec. 4329, Rev. C. 1907; re-en. Sec. 6563, R.C.M. 1921; Cal. Civ. C. Sec. 488; re-en. Sec. 6563, R.C.M. 1935; R.C.M. 1947, 72-607.**

69-14-209. Issuance of passenger tickets. (1) Every railroad corporation must provide and, on being tendered the regular rates of fare, furnish a ticket to every person desiring a passage on its passenger cars, which entitles the purchaser to a ride and to the accommodations provided on its cars from the depot or station where the same is purchased to any other depot or station on the line of its road. Every such ticket entitles the holder thereof to ride on its passenger cars to the station or depot of destination or any intermediate station and from any intermediate station to the depot of destination designated in the ticket at any time within 6 months thereafter.

(2) Any corporation failing to provide and furnish tickets or refusing the passage which the same calls for when sold must pay to the person refused the sum of $200.

History: **En. Sec. 977, Civ. C. 1895; re-en. Sec. 4330, Rev. C. 1907; re-en. Sec. 6564, R.C.M. 1921; Cal. Civ. C. Sec. 490; re-en. Sec. 6564, R.C.M. 1935; R.C.M. 1947, 72-608; amd. Sec. 34, Ch. 43, L. 1979.**

69-14-210. Baggage checks. A check must be affixed to every package or parcel of baggage when taken for transportation by any agent or employee of such railroad corporation and a duplicate thereof given to the passenger or person delivering the same in his behalf. If such check is refused on demand, the railroad corporation must pay to such passenger the sum of $20, to be recovered in an action for damages, and no fare or toll must be collected or received from such passenger, and if such passenger has paid his fare, the same must be returned by the conductor in charge of the train. On producing the check, if his baggage is not delivered to him by the agent or employee of the railroad corporation, he may recover the value thereof from the corporation.

History: **En. Sec. 970, Civ. C. 1895; re-en. Sec. 4323, Rev. C. 1907; re-en. Sec. 6557, R.C.M. 1921; Cal. Civ. C. Sec. 479; re-en. Sec. 6557, R.C.M. 1935; R.C.M. 1947, 72-601.**

69-14-211. Certificate of authority for ticket agents. (1) It shall be the duty of the owners of any railroad or steamboat for the transportation of passengers to provide each agent who may be authorized to sell, within the state, tickets or other evidence entitling the holder thereof to travel upon their railroad or steamboat with a certificate setting forth the authority of such agent to make such sales. The certificate shall be duly attested by the corporate seal of any corporate owner of such railroad or steamboat and shall, for the information of travelers, be kept posted in a conspicuous place in the office of such agent.

(2) It shall be the duty of every agent residing or acting within this state who shall be authorized to sell therein tickets or other evidence of the holder's title to travel upon any railroad or steamboat to exhibit to any person desiring to purchase a ticket or to any officer of the law who may request him to do so such certificate of his authority thus to sell.

History: (1)En. Sec. 1, p. 150, L. 1893; re-en. Sec. 978, Civ. C. 1895; re-en. Sec. 4331, Rev. C. 1907; re-en. Sec. 6565, R.C.M. 1921; re-en. Sec. 6565, R.C.M. 1935; amd. Sec. 1, Ch. 5, L. 1943; amd. Sec. 1, Ch. 60, L. 1949; Sec. 72-609, R.C.M. 1947; (2)En. Sec. 4, p. 151, L. 1893; re-en. Sec. 981, Civ. C. 1895; re-en. Sec. 4334, Rev. C. 1907; re-en. Sec. 6568, R.C.M. 1921; re-en. Sec. 6568, R.C.M. 1935; amd. Sec. 3, Ch. 60, L. 1949; Sec. 72-612, R.C.M. 1947; R.C.M. 1947, 72-609, 72-612.

69-14-212. Unlawful sale of tickets. (1) It shall be unlawful for any person not a duly authorized ticket agent and in possession of such certificate, so posted as aforesaid, to sell, barter, or transfer within this state for any consideration the whole or any part of any ticket or other evidence of the holder's title or right to travel on said railroad or steamboat, whether such railroad or steamboat be situated, operated, or owned within or without the limits of this state.

(2) Whoever shall violate the provisions of this section shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding $500 or by imprisonment not exceeding 1 year or both, in the discretion of the court in which such offender shall be convicted.

History: (1)En. Sec. 2, p. 150, L. 1893; re-en. Sec. 979, Civ. C. 1895; re-en. Sec. 4332, Rev. C. 1907; re-en. Sec. 6566, R.C.M. 1921; re-en. Sec. 6566, R.C.M. 1935; amd. Sec. 2, Ch. 60, L. 1949; Sec. 72-610, R.C.M. 1947; (2)En. Sec. 3, p. 151, L. 1893; re-en. Sec. 980, Civ. C. 1895; re-en. Sec. 4333, Rev. C. 1907; re-en. Sec. 6567, R.C.M. 1921; re-en. Sec. 6567, R.C.M. 1935; Sec. 72-611, R.C.M. 1947; R.C.M. 1947, 72-610, 72-611.

69-14-213. Redemption of unused tickets. (1) It shall be the duty of the owners of every railroad or steamboat situate or operated in whole or in part within this state to provide for the redemption, under reasonable precautions, of the whole or of any coupon of any ticket theretofore sold by any agent, authorized as aforesaid, which the purchaser, for any reason other than the expiration of the time limited in said ticket for the use thereof, has not used, at cost in case of the ticket not used and at a rate which shall be equal to the difference between the price paid for the whole ticket and the cost of a ticket between the points for which the used portion of said ticket was actually used in case of a coupon of a ticket partially used; provided, that such ticket or coupon shall be presented for such redemption to any agent, authorized as aforesaid, before the time therein limited for the use thereof shall have expired. The deposit of such ticket or part of ticket in the post office, addressed to any such agent, with postage thereon duly prepaid, before the expiration of the time limited on such ticket or part of ticket shall be deemed such presentation.

(2) When any ticket-selling agent, so licensed as aforesaid, or any common carrier subject to the provisions of 69-14-211 through 69-14-214, shall sell, barter, or transfer to any person any mileage book or commutation tickets or excursion ticket at any reduced rate authorized by law and when such mileage book, commutation ticket, or excursion ticket shall by the terms thereof be limited in respect of the time in which the same shall be used, then and in that case, such mileage book, commutation ticket, or excursion

ticket shall not be redeemed by said common carrier subject to the provisions of 69-14-211 through 69-14-214.

(3) The sale by any person of such ticket or of the unused portion of any such ticket or coupon otherwise than by the presentation of the same for redemption, as hereinbefore provided, shall be deemed to be a violation, and any person guilty of such violation shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding $500 or by imprisonment not exceeding 1 year or both, in the discretion of the court in which such offender shall be convicted.

History: **En. Sec. 5, p. 152, L. 1893; re-en. Sec. 982, Civ. C. 1895; re-en. Sec. 4335, Rev. C. 1907; re-en. Sec. 6569, R.C.M. 1921; re-en. Sec. 6569, R.C.M. 1935; R.C.M. 1947, 72-613.**

69-14-214. Penalty for failure to redeem ticket. Any railroad company or steamboat company which shall by any of its authorized ticket-selling agents within this state unreasonably refuse to redeem any coupon of a ticket or any ticket as required by 69-14-213 shall pay to the state a fine not exceeding $500 for each offense.

History: **En. Sec. 6, p. 152, L. 1893; re-en. Sec. 983, Civ. C. 1895; re-en. Sec. 4336, Rev. C. 1907; re-en. Sec. 6570, R.C.M. 1921; re-en. Sec. 6570, R.C.M. 1935; R.C.M. 1947, 72-614.**

69-14-215. Issuance of bills of lading by railroad station agents — penalty. (1) All railway companies operating in the state which do not permit bills of lading to be issued by employees other than agents shall be required to have bills of lading issued by the station agent at the nearest station where a station agent is regularly maintained in the direction toward which the shipment is destined. The conductor of the train which receives the shipment at its point of origin shall deliver to the agent at the nearest station at which an agent is maintained through which the shipment moves, immediately upon the arrival of the train carrying the shipment at the agency station, all data necessary for the issuance of a bill of lading for the shipment. The agent shall immediately issue the bill of lading and shall deliver the same to the shipper or his agent or shall, within 24 hours after the receipt of the data from the conductor, for shipment of 20,000 pounds or over, deposit the bill of lading in a United States post office, addressed and registered or certified to the consignor of the shipment or his agent or attorney to his proper post-office address. A bill of lading for shipments of less than 20,000 pounds may be mailed without the use of registered or certified mail.

(2) Any railway company operating in Montana violating any provisions of this section is guilty of a misdemeanor and liable to a fine of not less than $50 or more than $1,000.

History: **En. Secs. 1, 2, Ch. 24, L. 1917; re-en. Secs. 6611, 6612, R.C.M. 1921; re-en. Secs. 6611, 6612, R.C.M. 1935; R.C.M. 1947, 72-654, 72-655; amd. Sec. 35, Ch. 43, L. 1979.**

69-14-216. Restriction on contractual time limitations for notification of injury to transported livestock. Any provision, stipulation, or condition in any shipping contract, bill of lading, or other agreement made or entered into by or between any common carrier and the owner or shipper of any shipment of livestock providing that written or verbal notice of loss, injury, or damage thereto or of claim therefor shall be made or given to any common carrier, to any agent or officer of any common carrier, or to any other person within any period less than 4 months from the date of the occurrence of any such loss, injury, or damage shall be void and of no effect.

History: En. Sec. 1, Ch. 138, L. 1909; re-en. Sec. 6550, R.C.M. 1921; re-en. Sec. 6550, R.C.M. 1935; R.C.M. 1947, 72-411.

69-14-217 through 69-14-230 reserved.

69-14-231. Brake equipment. The commission shall have the power and authority to examine and inspect all brakes and brake equipment and after notice and hearing to make and enforce reasonable rules with respect to the examination, inspection, and repair thereof, with a view of determining the proper measure of efficiency of said brakes and brake equipment. Such rules shall be from time to time coextensive with the requirements of and in conformity to the provisions of the acts of congress and rules and regulations of the interstate commerce commission and the department of transportation, as then effective.

History: En. Sec. 2, Ch. 136, L. 1909; re-en. Sec. 3828, R.C.M. 1921; re-en. Sec. 3828, R.C.M. 1935; amd. Sec. 3, Ch. 124, L. 1971; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-151.

69-14-232. Size and equipment of caboose. (1) Cabooses shall be at least 24 feet in length, exclusive of platforms, and shall be provided with a door in each end and with cupolas or bay windows, platforms, guardrails, grabirons, and steps for the safety of persons in alighting or getting on cabooses. Cabooses shall be of metal frame construction and be sufficiently insulated to eliminate track and other related noise above 85 decibels in any octave in the speech range. Other requirements for cabooses are as follows:

(a) The trucks shall provide riding qualities at least equal to those of freight type trucks modified with elliptical or additional coil springs or other means of equal or greater efficiency and shall have at least two four-wheel trucks with standard steel wheels or their equivalent. Draft gears shall have a minimum travel of 2 ½ inches and a minimum capacity of 18,000 foot-pounds and shall comply with Association of American Railroads Standard M-901 or its equivalent.

(b) Electric lighting of at least 40 foot-candles shall be provided for direct illumination of the caboose desk, reading areas, and lavatory facilities.

(c) A spotlight shall be provided on the rear of the caboose with sufficient candlepower to illuminate the track for a distance of at least 300 feet to the rear of the caboose during the hours of darkness.

(d) The caboose marker or markers shall be either reflectorized or capable of illumination when required.

(e) Only glass of the safety-glass type shall be used in partitions, doors, windows, or wind deflectors.

(f) All seats and seat backs shall conform to the safety standards designated by the United States department of transportation in its "Federal Motor Vehicle Safety Standards", Motor Vehicle Safety Standard No. 201. All edges and protrusions on seats and seat backs shall be rounded to prevent injury to employees.

(2) Any person, corporation, or company, operating any railroad or railway in this state, violating any of the provisions of this section and

69-14-233 is guilty of a misdemeanor and upon conviction thereof shall be fined not less than $500 or more than $1,000 for each offense.

History: (1)En. Sec. 1, Ch. 54, L. 1907; Sec. 4338, Rev. C. 1907; re-en. Sec. 6577, R.C.M. 1921; re-en. Sec. 6577, R.C.M. 1935; amd. Sec. 1, Ch. 92, L. 1975; amd. Sec. 1, Ch. 32, L. 1977; Sec. 72-622, R.C.M. 1947; (2)En. Sec. 2, Ch. 54, L. 1907; Sec. 4339, Rev. C. 1907; re-en. Sec. 6578, R.C.M. 1921; re-en. Sec. 6578, R.C.M. 1935; Sec. 72-623, R.C.M. 1947; R.C.M. 1947, 72-622(1), 72-623; amd. Sec. 36, Ch. 43, L. 1979.

69-14-233. Failure of caboose equipment or maintenance. (1) Where a failure occurs in required equipment or standards of maintenance after a caboose has commenced to move in service, the failure shall be reported in accordance with subsection (2). The railroad operating that caboose is not in violation of this section and 69-14-232 if the failure of equipment or standards of maintenance is corrected at the first point maintenance supplies are available or in the case of repairs, the first point materials and repair facilities are available and repairs can reasonably be made.

(2) A register for the reporting of failures of the required equipment or standards of maintenance shall be maintained on all cabooses, and provisions for maintaining a record of reported failures for not less than the previous 80-day period shall be established.

History: En. Sec. 1, Ch. 54, L. 1907; Sec. 4338, Rev. C. 1907; re-en. Sec. 6577, R.C.M. 1921; re-en. Sec. 6577, R.C.M. 1935; amd. Sec. 1, Ch. 92, L. 1975; amd. Sec. 1, Ch. 32, L. 1977; R.C.M. 1947, 72-622(part).

69-14-234. Authorization for exemption from caboose provisions. If, in any particular case, temporary exemption from any requirements of 69-14-232 and 69-14-233 is considered necessary by a carrier concerned, the commission may consider the application of that carrier for temporary exemption and may grant an exemption when the application is accompanied by a full statement of the conditions existing and the reason for the exemption. Any exemption so granted will be limited to the particular case and will be limited to a stated period of time.

History: En. Sec. 1, Ch. 54, L. 1907; Sec. 4338, Rev. C. 1907; re-en. Sec. 6577, R.C.M. 1921; re-en. Sec. 6577, R.C.M. 1935; amd. Sec. 1, Ch. 92, L. 1975; amd. Sec. 1, Ch. 32, L. 1977; R.C.M. 1947, 72-622(part).

69-14-235. Application of caboose provisions. The provisions of 69-14-232 through 69-14-234 apply to all cabooses except those used exclusively in yard service.

History: En. Sec. 1, Ch. 54, L. 1907; Sec. 4338, Rev. C. 1907; re-en. Sec. 6577, R.C.M. 1921; re-en. Sec. 6577, R.C.M. 1935; amd. Sec. 1, Ch. 92, L. 1975; amd. Sec. 1, Ch. 32, L. 1977; R.C.M. 1947, 72-622(4).

69-14-236. Headlights and speedometers for locomotives. (1) A person, corporation, or company operating a railroad or railway in this state must equip all locomotive engines used in the transportation of trains over the railroad or railway with:

(a) electric headlights of at least 1,500 candlepower, measured without the aid of a reflector; and

(b) a speedometer that is maintained in good working order at all times and that is located in the lead or controlling unit.

(2) A locomotive used exclusively in yard service is not required to be equipped with a speedometer.

(3) If the speedometer fails en route, it will be deemed as being in good working order until it reaches the next terminal where it will be exchanged with an engine with a working speedometer if one is available.

(4) Any person, corporation, or company, operating any railroad or railway in this state, violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than $100 or more than $1,000 for each offense.

History: **(1) thru (3)En. Sec. 1, Ch. 18, L. 1909; re-en. Sec. 6609, R.C.M. 1921; re-en. Sec. 6609, R.C.M. 1935; amd. Sec. 1, Ch. 181, L. 1977; Sec. 72-652, R.C.M. 1947; (4)En. Sec. 2, Ch. 18, L. 1909; re-en. Sec. 6610, R.C.M. 1921; re-en. Sec. 6610, R.C.M. 1935; Sec. 72-653, R.C.M. 1947; R.C.M. 1947, 72-652, 72-653.**

69-14-237. Locomotive engines and electric motors to be marked with identifying numbers. (1) It shall be the duty of every person, corporation, or company operating a railroad or railway in this state to equip all locomotive engines and electric motors used in hauling trains over said railroad or railway with suitable numbers, which numbers shall be displayed at the front and both sides of the headlight on said locomotive engine or electric motor and to be such size as to be easily read from a passing or meeting train.

(2) When a complaint is made to the commission that any person, corporation, or company operating a railroad or railway in this state has failed to comply with the provisions of this section, such commission shall order a hearing and shall serve a notice on such person, corporation, or company at least 15 days before the date set for such hearing. The notice may be served upon any agent of such person, corporation, or company. At the conclusion of such hearing, the commission may make such order in the premises as is deemed necessary and may prescribe the time within which all such locomotive engines shall be equipped with such numbers.

(3) Any person, corporation, or company operating a railroad or railway in this state who violates any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than $50 or more than $100 for each offense.

History: **(1)En. Sec. 1, Ch. 145, L. 1919; re-en. Sec. 6620, R.C.M. 1921; re-en. Sec. 6620, R.C.M. 1935; Sec. 72-663, R.C.M. 1947; (2)En. Sec. 2, Ch. 145, L. 1919; re-en. Sec. 6621, R.C.M. 1921; re-en. Sec. 6621, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; Sec. 72-664, R.C.M. 1947; (3)En. Sec. 3, Ch. 145, L. 1919; re-en. Sec. 6622, R.C.M. 1921; re-en. Sec. 6622, R.C.M. 1935; Sec. 72-665, R.C.M. 1947; R.C.M. 1947, 72-663, 72-664, 72-665.**

69-14-238. Equipment for track motor cars. (1) Every person, firm, or corporation operating or controlling any railroad running through or within this state as a common carrier shall:

(a) equip each of its track motor cars with:

(i) a windshield of safety glass and a device for wiping rain, snow, and other moisture therefrom; such device shall be maintained in good order and so constructed as to be controlled by the operator of said track motor car; and

(ii) upon request of the foreman, a canopy or top of such construction as to adequately protect the occupants thereof from the rays of the sun, rain, snow, or other inclement weather;

(b) equip each of its track motor cars used during the period from 30 minutes before sunset to 30 minutes after sunrise with:

(i) an electric headlight of such construction and with sufficient candlepower to be plainly visible at a distance of not less than 300 feet in advance of such track motor car, any track obstruction, landmark, warning sign, or grade crossing; and

(ii) a red rear electric light of sufficient candlepower to be plainly visible at a distance of not less than 300 feet.

(2) Every violation of this section is a misdemeanor.

History: (1)(a)En. Sec. 1, Ch. 109, L. 1957; Sec. 72-668, R.C.M. 1947; (1)(b)En. Sec. 2, Ch. 109, L. 1957; Sec. 72-669, R.C.M. 1947; (2)En. Sec. 3, Ch. 109, L. 1957; Sec. 72-670, R.C.M. 1947; R.C.M. 1947, 72-668, 72-669, 72-670.

69-14-239. Operation of trains at grade crossings. (1) Except as provided in subsection (2), no railway company operating trains within this state shall permit any locomotives or cars to cross the tracks of any other railroad, at grade, without coming to a full stop immediately before crossing.

(2) (a) If any railway company or companies using one or more tracks crossing each other or connecting in any way at a common grade shall, by an interlocking plant, signal station, or any other works or fixtures, to be erected by them or either of them, render it safe to pass over said crossings without stopping and if such plant, works, or fixtures shall have been first approved by the county commissioners of the county wherein such works are to be constructed and used and the plans of such works and fixtures for such crossing, designating the place of such crossing, shall have been filed with such commissioners, then and in that case the foregoing provisions of this section requiring the stopping of trains at such crossing shall not apply to said companies or either of them.

(b) If said county commissioners shall disapprove any such plans so filed with them or fail to approve the same within 20 days after the filing thereof with them, such railway companies or either of them may apply in the county where such crossing is situated to the district court in and for said county or to a judge thereof in vacation, by petition in writing setting forth the object of such application. Said court or judge shall thereupon appoint a time and place for the hearing of said petition, and a copy of the order appointing such time and place, together with a copy of said petition, shall be served upon said county commissioners at least 10 days before the day appointed for said hearing. Said district court or a judge thereof in vacation shall have full power upon the hearing of said petition to grant the prayer thereof or to make such other order thereon as may be proper in the premises, and the foregoing provisions of this section requiring the stoppage of trains at crossings shall not apply to said railway companies or either of them if said district court shall by its order upon said petition grant the prayer thereof or otherwise and to any extent approve the construction and use of the interlocking plant or other structures therein referred to.

History: En. Sec. 1, Ch. 8, L. 1903; re-en. Sec. 4359, Rev. C. 1907; re-en. Sec. 6596, R.C.M. 1921; re-en. Sec. 6596, R.C.M. 1935; R.C.M. 1947, 72-641.

69-14-240. Duty to construct drains and ditches. (1) It shall be the duty of every corporation, company, or person owning or operating any railroad or branch thereof in this state and of any corporation, company, or person constructing any railroad in this state, within 3 months after the completion of the same through any county in this state, to cause to be constructed and maintained suitable ditches and drains along each side of the roadbed of such road or to construct culverts or openings through such roadbed to connect with ditches, drains, or watercourses, so as to afford sufficient outlet to drain and carry off the water along such railroad whenever the draining of such water has been obstructed or rendered necessary by the construction of such railroad. None of the drains or ditches herein referred to shall be required to be constructed by any of the persons or corporations herein named or described except when required to remove and drain off water accumulated upon property adjacent to or upon the right-of-way whose natural channel or outlet has been destroyed or impaired by the embankment of such railway so constructed as aforesaid.

(2) In case such corporation, company, or person shall fail or neglect to construct and maintain such ditches or drains as are herein required within the time limited in this section, the board of county commissioners of any county through which such railroad has been or may be constructed and located and in which the draining herein required has been neglected is hereby authorized and required, upon the petition of 20 landowners of such county along the line of and contiguous to such railroad, to cause such ditches or drains, as are herein required, to be constructed and maintained. Said board of county commissioners may maintain an action against such corporation, company, or person so failing to comply with the provisions of this section, in any court of competent jurisdiction and in the name of such county, and shall be entitled to recover all costs and expenses incurred in the construction and maintenance of said drains or ditches.

History: **En. Sec. 2, Ch. 101, L. 1903; re-en. Sec. 4362, Rev. C. 1907; re-en. Sec. 6599, R.C.M. 1921; re-en. Sec. 6599, R.C.M. 1935; R.C.M. 1947, 72-644.**

69-14-241 through 69-14-250 reserved.

69-14-251. Annual reports. (1) The commission shall require verified annual reports from each and every railroad owning, operating, or having any line of railroad in this state and shall prescribe the manner in which such reports shall be made and may require specific answers to all questions upon which the commission may desire information. It shall be the duty of the president or other officer in charge of such railroad to make such report and answers to the commission. The commission, at such other times as it may deem necessary, may require such other information, statements, or reports as may be deemed necessary and may fix the time for filing of the same.

(2) Any railroad failing or refusing to make or file such annual report or failing or refusing to furnish such additional information, statements, or reports, as may be demanded by the commission, shall forfeit the sum of $500 for each day that such refusal or neglect shall be continued.

History: **En. Sec. 32, Ch. 37, L. 1907; Sec. 4395, Rev. C. 1907; re-en. Sec. 3814, R.C.M. 1921; re-en. Sec. 3814, R.C.M. 1935; R.C.M. 1947, 72-137.**

69-14-252. Accident reports. Every railroad company operating any line of railroad within this state shall promptly upon the occurrence of any accident mentioned in 69-14-112(2) report the same to the commission. In the report shall be stated the time and place of the accident, the names of the persons killed or injured, and the value of any property destroyed.

History: **En. Sec. 17, Ch. 37, L. 1907; Sec. 4380, Rev. C. 1907; re-en. Sec. 3799, R.C.M. 1921; re-en. Sec. 3799, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-121; amd. Sec. 37, Ch. 43, L. 1979.**

Part 3

Ratemaking Procedures

69-14-301. Commission powers related to ratemaking. (1) The commission shall adopt all necessary rates, charges, and regulations to govern and regulate freight and passenger tariffs, to correct abuses, and to prevent unjust discrimination and intimidation in the rates of freight and passenger tariffs on the different railroads in this state and to make the same effective by enforcing the penalties prescribed in this chapter.

(2) The commission shall fairly and justly classify and subdivide all freight and merchandise of whatever character that may be transported over railroads of this state into such general and special classes or subdivisions as may be considered necessary or expedient.

(3) The commission may fix different rates for different railroads and for different lines under the same management or for different parts of the same lines if found necessary to do justice and may make rates for express companies different from the rates fixed for railroads. The commission shall also fix and establish for all or any connecting lines of railroad in this state reasonable joint rates of freight charges for the various classes of freight and cars that may pass over two or more lines of such railroads.

(4) The commission shall make and establish reasonable rates for the transportation of freight within the state and shall prescribe rates, tolls, and charges for all other services performed by any railroad subject hereto.

History: (1) thru (3)En. Sec. 13, Ch. 37, L. 1907; Sec. 4375, Rev. C. 1907; re-en. Sec. 3794, R.C.M. 1921; re-en. Sec. 3794, R.C.M. 1935; amd. Sec. 57, Ch. 359, L. 1977; Sec. 72-116, R.C.M. 1947; (4)En. Sec. 15, Ch. 37, L. 1907; Sec. 4377, Rev. C. 1907; amd. Sec. 1, Ch. 176, L. 1921; re-en. Sec. 3796, R.C.M. 1921; re-en. Sec. 3796, R.C.M. 1935; amd. Sec. 1, Ch. 227, L. 1971; amd. Sec. 1, Ch. 429, L. 1973; Sec. 72-118, R.C.M. 1947; R.C.M. 1947, 72-116(1), 72-118(part); amd. Sec. 38, Ch. 43, L. 1979.

69-14-302. Treatment of unclassified charges. The rates, tolls, or charges on any property which shall for any reason remain unclassified by the commission shall not in any event exceed the highest rates fixed for any classification by the commission.

History: En. Sec. 13, Ch. 37, L. 1907; Sec. 4375, Rev. C. 1907; re-en. Sec. 3794, R.C.M. 1921; re-en. Sec. 3794, R.C.M. 1935; amd. Sec. 57, Ch. 359, L. 1977; R.C.M. 1947, 72-116(part).

69-14-303. Prohibition on rate discrimination. (1) If any railroad subject hereto, directly or indirectly or by any special rate, rebate, drawback, or other device, charges, demands, or receives from any person, firm, or corporation a greater or lesser compensation for any service rendered or to be rendered in the transportation of property subject to the provisions of this chapter than that fixed by the commission for such service, such railroad shall forfeit and pay to the state not less than $500 or more than $2,000 for each offense. Nothing in this subsection prevents any railroad or railroad corporation from giving excursion rates to or from any point within or without the state.

(2) If any railroad subject to this chapter or its agents or officers hereafter collects, charges, demands, or receives from any person, company, firm, or corporation a greater rate, charge, or compensation than that fixed and established by the commission for the transportation of freight, passengers,

or cars or for the use of any car on the line of its railroad or any line operated by it or for receiving, forwarding, handling, or storing any such freight car or for any other service performed or to be performed by it, such railroad and its agents and officers shall forfeit and pay to the state a sum not less than $500 or more than $2,000.

(3) (a) It is unlawful for any railroad subject to this title to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kinds of property for a shorter distance than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as through rate than the aggregate of the intermediate rates; provided that upon application to the commission and after investigation, such carrier, in special cases, may be authorized by the commission to charge less for longer than for shorter distances for the transportation of passengers or property, and the commission may from time to time prescribe the extent to which such designated carriers may be relieved from the operation of the foregoing provisions of this subsection, but in exercising the authority conferred upon it in this proviso, the commission shall not permit the establishment of any charge to or from the more distant point that is not reasonably compensatory for the service performed.

(b) Violations of subsection (3) shall be punished in accordance with 69-14-805.

History: (1), (2)En. Secs. 22, 23, Ch. 37, L. 1907; Secs. 4385, 4386, Rev. C. 1907; re-en. Secs. 3804, 3805, R.C.M. 1921; re-en. Secs. 3804, 3805, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; amd. Secs. 58, 59, Ch. 359, L. 1977; Secs. 72-126, 72-127, R.C.M. 1947; (3)En. 72-231 by Sec. 1, Ch. 473, L. 1977; Sec. 72-231, R.C.M. 1947; R.C.M. 1947, 72-126, 72-127, 72-231; amd. Sec. 39, Ch. 43, L. 1979.

69-14-304. Prohibition on tunnel charges. (1) It shall be unlawful for any person, association, or corporation operating, leasing, or owning a railroad in the state to accept, demand, or receive any tunnel charges or to accept, demand, or receive any extra mileage or any extra compensation for or on account of any tunnel through which said line of railroad may run. None of the provisions of this section shall apply to rates or charges for travel to or from points outside of the state.

(2) Any person, association, corporation, agent, or manager who shall violate any provision of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than $200 or more than $1,000 for each offense.

History: (1)En. Sec. 1, p. 164, L. 1901; re-en. Sec. 4353, Rev. C. 1907; re-en. Sec. 6590, R.C.M. 1921; re-en. Sec. 6590, R.C.M. 1935; Sec. 72-635, R.C.M. 1947; (2)En. Sec. 2, p. 165, L. 1901; re-en. Sec. 4354, Rev. C. 1907; re-en. Sec. 6591, R.C.M. 1921; re-en. Sec. 6591, R.C.M. 1935; Sec. 72-636, R.C.M. 1947; R.C.M. 1947, 72-635, 72-636.

69-14-305. Notice of proposed rate schedule. Before finally fixing and deciding what the original maximum rates and classifications shall be, it shall be the duty of the commission to publish 10 days' notice in two daily papers, one of which is published in the city of Helena, setting forth in such notice that at a certain time and place they will proceed to fix and determine such maximum rates and classifications.

History: En. Sec. 14, Ch. 37, L. 1907; Sec. 4376, Rev. C. 1907; re-en. Sec. 3795, R.C.M. 1921; re-en. Sec. 3795, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-117(part).

69-14-306. Hearing on proposed rates. The commission shall at the time and place listed in the notice required by 69-14-305 and as soon as practicable afford to any person, firm, corporation, or common carrier who may desire it an opportunity to make an explanation or showing or to furnish information to said commission on the subject of determining and fixing such maximum rates and classifications.

History: En. Sec. 14, Ch. 37, L. 1907; Sec. 4376, Rev. C. 1907; re-en. Sec. 3795, R.C.M. 1921; re-en. Sec. 3795, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-117(part).

69-14-307. Effective date of classifications and rates. All classifications and rates fixed and established by the commission shall become effective 20 days after the railroad affected thereby shall have received certified copies thereof from said commission.

History: En. Sec. 14, Ch. 37, L. 1907; Sec. 4376, Rev. C. 1907; re-en. Sec. 3795, R.C.M. 1921; re-en. Sec. 3795, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-117(part).

69-14-308. Publication and posting of notice of rate schedule. (1) When any schedules shall have been made or revised, it shall be the duty of said commissioners to cause notice thereof to be published for 2 successive weeks in some newspaper published in the city of Helena. The notice shall state the date of taking effect of said schedule, and said schedule shall take effect at the time so stated in such notice.

(2) A printed notice of such schedule shall be conspicuously posted by such common carrier in each freight office and passenger depot upon its lines.

History: En. Sec. 14, Ch. 37, L. 1907; Sec. 4376, Rev. C. 1907; re-en. Sec. 3795, R.C.M. 1921; re-en. Sec. 3795, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-117(part).

69-14-309. Posting of rate schedule. Each railroad affected by the provisions of this chapter shall display, in a conspicuous place in each of its stations in this state, a schedule printed in plain, legible, English type showing all classifications and rates fixed and established by the commission.

History: En. Sec. 14, Ch. 37, L. 1907; Sec. 4376, Rev. C. 1907; re-en. Sec. 3795, R.C.M. 1921; re-en. Sec. 3795, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-117(part); amd. Sec. 40, Ch. 43, L. 1979.

69-14-310. Failure of railroad to comply. Any failure or refusal on the part of any railroad to comply with the provisions of 69-14-305 through 69-14-309 shall subject such railroad to a penalty of not less than $100 or more than $500 for each day that such failure or neglect is continued.

History: En. Sec. 14, Ch. 37, L. 1907; Sec. 4376, Rev. C. 1907; re-en. Sec. 3795, R.C.M. 1921; re-en. Sec. 3795, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-117(part).

69-14-311. Procedure to alter classifications, rates, and rules of service. (1) The commission shall have the power from time to time to change, alter, amend, or abolish any classification or rate established by it when deemed necessary, as hereinafter provided.

(2) No change or revision of any rate, charge, classification, or rule of service contained in any tariff, classification, or rule of a railroad shall be made by any railroad without first obtaining approval therefor from the commission. Such changes or revisions shall be made by either of the methods hereinafter set forth:

(a) The railroad shall file an application with the commission describing the nature and extent of the change, alteration, or cancellation of the rate, classification, or rule sought, and the commission shall thereafter give not less than 10 days' notice, in the manner determined by the commission as most likely to give notice to the persons to be affected, of the time and place of public hearing to be held on the application by the commission, at which time and place the public generally or any person, firm, or corporation shall have an opportunity to present such facts, information, or statistics as shall be pertinent to the hearing then being held.

(b) The railroad shall file with the commission the tariff sheet or sheets containing such changes or revisions, plainly stating the changes or revisions to be made. Whenever increased rates or charges will result, the proposed tariff sheets shall be accompanied at the time of filing by supporting testimony and exhibits prepared by the railroad. Additional testimony and exhibits may be submitted before or during the hearing provided for in 69-14-312 and may be submitted after the hearing with the approval of the commission. The public shall be provided with such notice of the proposed changes or revisions as the commission shall, by rule, require. The tariff sheet or sheets containing such changes or revisions shall be filed with the commission 45 days before the proposed effective date. The changes or revisions are effective on the stated effective date unless disallowed or suspended by the commission before that date. The commission may, for good cause, allow any change or revision to become effective in less than 45 days after the filing thereof.

History: En. Sec. 15, Ch. 37, L. 1907; Sec. 4377, Rev. C. 1907; amd. Sec. 1, Ch. 176, L. 1921; re-en. Sec. 3796, R.C.M. 1921; re-en. Sec. 3796, R.C.M. 1935; amd. Sec. 1, Ch. 227, L. 1971; amd. Sec. 1, Ch. 429, L. 1973; R.C.M. 1947, 72-118(part); amd. Sec. 1, Ch. 430, L. 1979.

69-14-312. Suspension of classification or rate change. (1) Upon its own initiative or upon the complaint of any interested party filed with the commission within 20 days after the date upon which a change or revision of any rate, fare, charge, or classification is filed with the board, the commission may suspend the operation of such rate, fare, charge, or classification for a period not to exceed 180 days; provided, however, that the order directing such suspension must be issued by the commission not less than 2 business days prior to the proposed effective date and that the rail carrier or carriers filing such rate, fare, charge, or classification shall be given prompt notice by the complaining party mailing a copy of the complaint concerning such proposed change or revision to the carrier or publishing agent. Such carrier or carriers also shall be given an opportunity to reply to any such complaint. If the proposed change or revision is in a tariff issued by a tariff publishing bureau for a rail carrier or carriers, notice to such bureau of any complaint will constitute notice to the participating carriers in such tariff.

(2) When the suspension of any proposed change or revision in a tariff is ordered by the commission, it shall also order a public hearing to consider the reasonableness of the proposed change or revision. Due notice shall be given for such hearing to all known interests or affected persons, and the same shall be allowed to appear and present evidence. After considering the evidence presented at such hearing, the commission shall issue an order approving, denying, or modifying the proposed change or revision; provided,

however, that unless such hearing is held and such order is issued within 180 days from the date upon which the suspension was ordered, the proposed change or revision shall be deemed approved and effective as filed.

History: **En. Sec. 15, Ch. 37, L. 1907; Sec. 4377, Rev. C. 1907; amd. Sec. 1, Ch. 176, L. 1921; re-en. Sec. 3796, R.C.M. 1921; re-en. Sec. 3796, R.C.M. 1935; amd. Sec. 1, Ch. 227, L. 1971; amd. Sec. 1, Ch. 429, L. 1973; R.C.M. 1947, 72-118(part).**

69-14-313. Fees to be charged by commission. The commission shall require and receive a fee from the affected railroad to pay the cost of publishing notice as required by this chapter.

History: **En. Sec. 3, Ch. 500, L. 1979.**

Compiler's Comments

Codification. Sec. 4, Ch. 500, L. 1979, provided: "It is intended that section 3 be codified as an integral part of Title 69, chapter 14, and the provisions of Title 69, chapter 14, apply to section 3."

69-14-314 through 69-14-320 reserved.

69-14-321. Complaints of unjust rate discrimination. (1) The commission may entertain and hear complaints made by any shipper to the effect that unjust discrimination is being made as against the state or any point therein in the way of rates for the transportation of freight or passengers from points without the state to points within the state and vice versa.

(2) In proper cases, where it appears that the United States interstate commerce commission law has been violated, the commission shall complain to the interstate commerce commission of the United States and aid such commission in any investigation it may make concerning violations of the United States law by furnishing evidence and in any other manner which may seem best suited to enforce both the United States and state law and to protect the interests of the people.

History: **En. Sec. 13, Ch. 37, L. 1907; Sec. 4375, Rev. C. 1907; re-en. Sec. 3794, R.C.M. 1921; re-en. Sec. 3794, R.C.M. 1935; amd. Sec. 57, Ch. 359, L. 1977; R.C.M. 1947, 72-116(part).**

69-14-322. Actions to recover excess charges. (1) Any sum or amount of money paid to any railroad by any person or shipper in excess of the rates, tolls, or charges fixed and established by the commission for such service may be recovered from such railroad by the person or shipper in any action instituted and maintained in the district court of the county in which such payment was made. No contract or agreement, written or otherwise, between such person or shipper and the railroad shall be admissible in evidence for the purpose of showing a waiver of the right given by this section. No voluntary payment by any person or shipper of any such excess or overcharge to any railroad shall be or be held to be a waiver on the part of such person or shipper of the right to sue and recover for such excess or overcharge as provided for in this section. If upon the trial of such action it shall satisfactorily appear to the court or jury that such overcharge was willfully made, the person or shipper bringing the action shall be awarded damages in treble the amount of such excess or overcharge, together with the costs and expenses of such action, including a reasonable attorney's fee, to be taxed and collected as other costs in the action.

(2) An action under this section must be brought within 3 years from the date the cause of action accrues.

History: En. Sec. 26, Ch. 37, L. 1907; Sec. 4389, Rev. C. 1907; re-en. Sec. 3808, R.C.M. 1921; amd. Sec. 1, Ch. 155, L. 1925; re-en. Sec. 3808, R.C.M. 1935; R.C.M. 1947, 72-130; amd. Sec. 41, Ch. 43, L. 1979.

Part 4

Review of Commission Action

69-14-401. Court review of commission actions. (1) Actions to review the determination of the commission fixing any classification, rate, toll, charge, regulation, or order or the refusal of said commission to make, fix, or establish any classification, rate, toll, charge, regulation, or order shall be commenced, in the district court of the county having jurisdiction thereof, by the filing of a complaint, duly verified as provided for the verification of pleadings in civil actions. Notice may be served upon the party defendant either by summons issued and served as provided for in this code in civil actions or the court may issue an order directed to the defendant requiring him to answer the complaint at such time as the court may deem reasonable; provided, however, that such time shall not be less than 5 days from the time of the service of such order. Upon the appearance of the defendant, he may deny or admit the facts set forth in said complaint, by answer, which shall be verified as the pleadings in other civil actions.

(2) If, upon the hearing, the court shall find that the rates fixed or the classifications made are unjust and unreasonable, it shall thereupon be the duty of said commission to make new rates or a reclassification, as the case may be. All orders or notices required under the provisions of this section may be issued by the court or by the judge thereof at chambers.

History: En. Sec. 21, Ch. 37, L. 1907; Sec. 4384, Rev. C. 1907; re-en. Sec. 3803, R.C.M. 1921; re-en. Sec. 3803, R.C.M. 1935; R.C.M. 1947, 72-125.

69-14-402. Lawsuit to determine reasonableness of commission actions. (1) Any railroad, shipper, or other interested person may bring an action in the district court of the county where the principal office or place of business of such railroad, shipper, or other interested person is situated or in any county where any classification, rate, toll, charge, rule, or order of the commission is applicable, against the commission as defendant, to determine whether or not any such classification, rate, toll, charge, rule, or order made, fixed, or established by the commission under the provisions of this chapter is just and reasonable.

(2) Until the final decision in any such action, the classification, rate, toll, charge, rule, or order of the commission affecting rates or charges shall be considered to be final and conclusive except as herein otherwise provided. In any action, hearing, or proceeding in any court, the classifications, rates, tolls, charges, rules, and orders made, fixed, and established by the commission shall prima facie be considered just, reasonable, and proper.

(3) All costs and expenses incurred in the hearing, trial, or appeal of any action brought under this section shall be fixed and assessed as may seem just and equitable to the court.

History: (1), (2)En. Sec. 28, Ch. 37, L. 1907; Sec. 4391, Rev. C. 1907; re-en. Sec. 3810, R.C.M. 1921; re-en. Sec. 3810, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; Sec. 72-133, R.C.M. 1947;

(3)En. Sec. 27, Ch. 37, L. 1907; Sec. 4390, Rev. C. 1907; re-en. Sec. 3809, R.C.M. 1921; re-en. Sec. 3809, R.C.M. 1935; Sec. 72-132, R.C.M. 1947; R.C.M. 1947, 72-132, 72-133; amd. Sec. 42, Ch. 43, L. 1979.

69-14-403. Repealed. Sec. 55, Ch. 43, L. 1979.

History: En. Sec. 7, Ch. 136, L. 1909; re-en. Sec. 3832, R.C.M. 1921; re-en. Sec. 3832, R.C.M. 1935; R.C.M. 1947, 72-155.

Part 5

Railroad Corporations

69-14-501. Organization of railroad corporation. (1) The persons named in the articles of incorporation or a majority of them shall be authorized to order books to be opened for receiving subscriptions to the capital stock of the railroad corporation, at such times and at such places as they may deem expedient, after having given at least 30 days' notice in a newspaper of general circulation in this state of the time and place of opening books.

(2) As soon as 5% of the capital stock is subscribed, they may give like notice for the stockholders to meet at such time and place within the state as they may designate for the purpose of electing five or more directors who shall continue in office until the time fixed for the annual election, which time shall be within 6 months from the date when such directors were elected, and until their successors are elected and qualified. At the time and place appointed, directors shall be elected in the manner provided in 35-1-506. The candidates for director receiving the highest number of votes shall be declared elected. The persons named in such articles or such of them as may be present shall be inspectors of such election and shall certify what persons are elected directors and specify the time and place for holding their first meeting.

History: En. Sec. 7, p. 95, Ex. L. 1873; re-en. Sec. 305, 5th Div. Rev. Stat. 1879; re-en. Sec. 683, 5th Div. Comp. Stat. 1887; amd. Sec. 893, Civ. C. 1895; re-en. Sec. 4274, Rev. C. 1907; re-en. Sec. 6506, R.C.M. 1921; re-en. Sec. 6506, R.C.M. 1935; R.C.M. 1947, 72-204(part); amd. Sec. 43, Ch. 43, L. 1979.

69-14-502. Organization of board of directors. (1) A majority of said directors shall form a board and be competent to fill vacancies therein, make bylaws, and transact all business of the corporation. The directors elected at any election shall, so soon thereafter as may be convenient, choose one of their number to be president and shall appoint a secretary and a treasurer of the corporation. The directors, before entering upon their duties, shall each take an oath or affirmation faithfully to discharge his duties. They may from time to time make such dividends of the actual net profits of said corporation as they may think proper and shall hold their offices until their successors are elected and qualified.

(2) A new election shall be annually held for directors, at such time and place as the stockholders at their first meeting shall determine or as the bylaws of the corporation may require.

History: En. Sec. 7, p. 95, Ex. L. 1873; re-en. Sec. 305, 5th Div. Rev. Stat. 1879; re-en. Sec. 683, 5th Div. Comp. Stat. 1887; amd. Sec. 893, Civ. C. 1895; re-en. Sec. 4274, Rev. C. 1907; re-en. Sec. 6506, R.C.M. 1921; re-en. Sec. 6506, R.C.M. 1935; R.C.M. 1947, 72-204(part).

69-14-503. Capital stock of railroad corporations. The capital stock of such corporation shall consist of such sum as may be named in the articles of incorporation, in shares of $100 each. Such shares shall be regarded as personal property.

History: En. Sec. 5, p. 93, Ex. L. 1873; re-en. Sec. 303, 5th Div. Rev. Stat. 1879; re-en. Sec. 681, 5th Div. Comp. Stat. 1887; amd. Sec. 891, Civ. C. 1895; re-en. Sec. 4272, Rev. C. 1907; re-en. Sec. 6504, R.C.M. 1921; re-en. Sec. 6504, R.C.M. 1935; R.C.M. 1947, 72-202(part).

69-14-504. Payment for stock in installments. An installment of 10% on each share of stock shall be paid at the time of making the subscription, and the residue thereof shall be paid in installments not exceeding 25% on the capital stock. These installments shall not be called for more frequently than once in 3 months and shall be payable at the principal office of the corporation to such persons as may be required by the directors.

History: En. Sec. 5, p. 93, Ex. L. 1873; re-en. Sec. 303, 5th Div. Rev. Stat. 1879; re-en. Sec. 681, 5th Div. Comp. Stat. 1887; amd. Sec. 891, Civ. C. 1895; re-en. Sec. 4272, Rev. C. 1907; re-en. Sec. 6504, R.C.M. 1921; re-en. Sec. 6504, R.C.M. 1935; R.C.M. 1947, 72-202(part).

69-14-505. Procedure in case of delinquency in payment of installments. (1) If any installment of stock shall remain unpaid for 60 days after the time specified for payment thereof, whether such stock is held by the original subscriber or his assignee, trustee, or successor in interest, the directors may sell the stock so unpaid at public auction for the installment then due thereon, first giving 30 days' public notice of the time and place of sale in some newspaper of general circulation in this state and by written notice sent by mail within 5 days after default made to each stockholder who is in default and whose name appears upon the books of the corporation, directed to him at his place of residence or if that is not known to the secretary, then to his address as last reported by the secretary of the corporation. Where any stock shall have belonged to a person deceased, the claim for installments shall not be liable to sale hereunder until a failure by the personal representative of the deceased owner to pay the installments due in regular course of administration.

(2) If any residue of money shall remain after paying the amount due on said stock, the same shall, on demand, be paid over to the owner.

(3) After the first election of directors, no person save the personal representatives of deceased persons, as aforesaid, shall vote on any share on which any installment is in default by reason of the nonpayment thereof, after the expiration of the 30 days' notice of sale hereinbefore provided for.

History: (1), (2)En. Sec. 6, p. 94, Ex. L. 1873; re-en. Sec. 304, 5th Div. Rev. Stat. 1879; re-en. Sec. 682, 5th Div. Comp. Stat. 1887; amd. Sec. 892, Civ. C. 1895; re-en. Sec. 4273, Rev. C. 1907; re-en. Sec. 6505, R.C.M. 1921; re-en. Sec. 6505, R.C.M. 1935; Sec. 72-203, R.C.M. 1947; (3)En. Sec. 7, p. 95, Ex. L. 1873; re-en. Sec. 305, 5th Div. Rev. Stat. 1879; re-en. Sec. 683, 5th Div. Comp. Stat. 1887; amd. Sec. 893, Civ. C. 1895; re-en. Sec. 4274, Rev. C. 1907; re-en. Sec. 6506, R.C.M. 1921; re-en. Sec. 6506, R.C.M. 1935; Sec. 72-204, R.C.M. 1947; R.C.M. 1947, 72-203, 72-204(part).

69-14-506. Increase of capital stock. If the amount of the capital stock shall be found insufficient to enable any such corporation to construct its road, it shall be competent for the directors, upon a vote of the stockholders, to increase the stock to such sum as shall cover the expenses of the construction of its road.

History: En. Sec. 21, p. 104, Ex. L. 1873; re-en. Sec. 319, 5th Div. Rev. Stat. 1879; re-en. Sec. 698, 5th Div. Comp. Stat. 1887; re-en. Sec. 906, Civ. C. 1895; re-en. Sec. 4287, Rev. C. 1907; re-en. Sec. 6519, R.C.M. 1921; re-en. Sec. 6519, R.C.M. 1935; R.C.M. 1947, 72-217.

69-14-507. Authorization to issue securities. Any railroad corporation whose line is wholly or partly within this state, whether chartered by or organized under the law of the state or territory of Montana, the United States, or any other state or territory:

(1) shall have authority and power to make, issue, negotiate, and deliver its bonds, securities, or obligations to such amount, not exceeding its authorized capital stock, bearing such rate of interest, and payable at such time or times as its board of directors shall determine;

(2) may negotiate, sell, pledge, or otherwise dispose of the same at such price, on such terms, and in such manner as its board of directors may authorize or determine; and

(3) to secure the payment of all or any of such bonds, securities, or obligations and the interest thereon, may make, execute, and deliver such mortgages or deeds of trust upon all or any part of its property, income, and franchises as the board of directors may determine or direct.

History: En. Sec. 706, 5th Div. Comp. Stat. 1887; re-en. Sec. 913, Civ. C. 1895; re-en. Sec. 4294, Rev. C. 1907; re-en. Sec. 6526, R.C.M. 1921; re-en. Sec. 6526, R.C.M. 1935; amd. Sec. 11-149, Ch. 264, L. 1963; R.C.M. 1947, 72-224.

69-14-508. Amendment of certificate of incorporation. Any corporation formed under the provisions of this part may, by a majority vote of its board of directors and by the assent of its stockholders, representing at least two-thirds of the subscribed capital stock of such corporation, expressed in writing or at a general or special meeting of stockholders, amend its certificate of incorporation in any one or more of the following particulars:

(1) by more particularly describing the general route of its road or any part thereof;

(2) by correcting or supplying any defect, mistake, or insufficiency in the description thereof contained in said certificate; or

(3) by describing any change or changes in its route or any additions or extensions to or of its line of road or by adding thereto or extending the same to points or termini other than those mentioned in the original certificate of incorporation.

History: En. Sec. 1, p. 147, L. 1893; re-en. Sec. 920, Civ. C. 1895; re-en. Sec. 4296, Rev. C. 1907; re-en. Sec. 6528, R.C.M. 1921; re-en. Sec. 6528, R.C.M. 1935; R.C.M. 1947, 72-226.

69-14-509. Record of amendment. A copy of such amendment or of the original certificate of incorporation, as amended, and a copy of the resolution of the board of directors adopting the same, certified by the president and secretary of the company, under the corporate seal, to be correct and to have been adopted by a majority vote of the directors of the company and to have been assented to in writing or by vote of stockholders representing at least two-thirds of the subscribed capital stock of the company, shall be filed with and recorded by the secretary of state. A like copy, certified as aforesaid, shall be filed with and recorded by the county clerk and recorder of the county in which the principal place of business of the company is or shall be situated. From the time of such filing, said original certificate of incorporation shall be deemed to be amended accordingly, and said corporation shall have the same rights and powers and it and the stockholders thereof shall be subject to the same liabilities as if such amendment had been embraced in the original articles or certificate of incorporation.

History: En. Sec. 2, p. 147, L. 1893; re-en. Sec. 921, Civ. C. 1895; re-en. Sec. 4297, Rev. C. 1907; re-en. Sec. 6529, R.C.M. 1921; re-en. Sec. 6529, R.C.M. 1935; R.C.M. 1947, 72-227.

69-14-510. Additional amendments permitted. Said certificate and amended certificate may be amended in like manner whenever deemed expedient or necessary by the board of directors and stockholders of the company.

History: En. Sec. 3, p. 147, L. 1893; re-en. Sec. 922, Civ. C. 1895; re-en. Sec. 4298, Rev. C. 1907; re-en. Sec. 6530, R.C.M. 1921; re-en. Sec. 6530, R.C.M. 1935; R.C.M. 1947, 72-228.

69-14-511. Authorization to consolidate railroad corporations. (1) Any two or more railroad corporations whose respective lines are wholly or partly within this state, whether chartered by or organized under the laws of the state or territory of Montana or of the United States or of any other state or territory, may consolidate their capital stock, franchises, and property and thereby become one corporation to be known by any name adopted by them, which may be that of one of them, upon such terms and conditions as may be agreed upon by them, in the manner provided in 69-14-512.

(2) Before any railroad corporation organized under the laws of any other state or territory or of the United States shall be permitted to avail itself of the benefits of this section and 69-14-512, such corporation shall file with the secretary of state a true copy of its charter or articles of incorporation.

History: En. Sec. 703, 5th Div. Comp. Stat. 1887; re-en. Sec. 911, Civ. C. 1895; re-en. Sec. 4292, Rev. C. 1907; re-en. Sec. 6524, R.C.M. 1921; Cal. Civ. C. Sec. 473; re-en. Sec. 6524, R.C.M. 1935; R.C.M. 1947, 72-222(part); amd. Sec. 44, Ch. 43, L. 1979.

69-14-512. Procedure to consolidate. (1) Articles of agreement shall be entered into by such corporations, under their respective corporate seals and the signatures of their respective presidents and secretaries, containing the terms and conditions of such consolidation and the mode of carrying the same into effect, including:

(a) the name of the corporation resulting from such consolidation;

(b) the amount of its capital stock and the number and amount of shares thereof;

(c) the manner of retiring the shares of the capital stock of the corporations so consolidated or of converting the same into or exchanging them for the capital stock of such resultant corporation;

(d) the number which shall constitute the board of directors of such corporation and what officers it shall have;

(e) the persons who shall constitute the first board of directors and officers thereof, their terms of office, and the manner in which their successors shall be elected, which shall be according to the provisions of 69-14-501; and

(f) such other matters as are considered necessary to perfect such consolidation and as may be agreed upon.

(2) Such articles of agreement shall, before the same shall be effectual, be assented to, approved, or ratified by the stockholders of the respective corporations so consolidated at a regular meeting of such stockholders or a special meeting thereof, duly called and held, by resolution adopted by a vote in favor thereof, in person or by proxy, of the holders of at least a majority in amount of the outstanding capital stock of such corporations, respectively.

(3) A duplicate of such articles of agreement, together with a copy of the resolutions adopted by the stockholders of such corporations assenting to, approving, or ratifying the same, certified under the corporate seal and the signature of the secretary and verified by a sworn statement of the president and secretary of the corporations stating that such resolution was duly adopted by the vote in favor thereof of the holders of a majority in amount of the outstanding capital stock of the corporations at a meeting of the stockholders thereof, duly held, shall be recorded in the office of the secretary of state. It shall be the duty of the secretary to record the same upon presentation for that purpose. Upon the filing thereof for record, as aforesaid, the corporation formed by such consolidation shall be a corporation by the corporate name mentioned in such articles of agreement and as such shall be perpetual and shall succeed to and have, own, possess, exercise, and enjoy all the powers, rights, franchises, privileges, immunities, and property of every name and nature possessed by the corporations so consolidated or to which they were entitled at the time of such consolidation and shall be entitled to have, own, hold, exercise, possess, and enjoy all the powers, rights, franchises, privileges, and immunities which may at any time appertain to railroad corporations under the general laws of this state. All railroads and branches thereof of the consolidated corporation are subject to taxation and to regulation and control by the laws of this state, in all respects the same as if constructed by corporations organized under the laws of this state.

History: En. Sec. 703, 5th Div. Comp. Stat. 1887; re-en. Sec. 911, Civ. C. 1895; re-en. Sec. 4292, Rev. C. 1907; re-en. Sec. 6524, R.C.M. 1921; Cal. Civ. C. Sec. 473; re-en. Sec. 6524, R.C.M. 1935; R.C.M. 1947, 72-222(part); amd. Sec. 45, Ch. 43, L. 1979.

69-14-513. Lease or purchase of other railroads. (1) Any railroad corporation, whether chartered by or organized under the laws of the state or territory of Montana, the United States, or any other state or territory, may lease or purchase the whole or any part of the railroad or line of railroad of any railroad corporation, constructed or unconstructed, together with all the rights, powers, immunities, privileges, franchises, and all other property or appurtenances thereto. The railroad company of any other state of the United States which purchases or leases a railroad or any part thereof in this state:

(a) shall possess and may exercise and enjoy, as to the control, management, and operation of the road, all the rights, powers, privileges, and franchises possessed by railroad corporations organized under the laws of this state, including the exercise of the power of eminent domain; and

(b) shall establish and maintain an office or offices in this state at some point or points on its line at which legal process and notice may be served, as upon railroad corporations of this state.

(2) Any railroad company may sell or lease the whole or any part of its railroad or branches within this state, constructed or to be constructed, together with all property and rights, privileges, and franchises pertaining thereto, to any railroad company organized or existing pursuant to the laws of the United States, this state, or any other state or territory of the United States.

(3) All roads or branches thereof in this state, whether purchased or leased, shall be subject to taxation and to regulation and control by the laws

of this state, in all respects the same as if constructed by corporations organized under the laws of this state.

(4) Before any such lease or purchase shall be effective, it shall be assented to or approved or ratified by the stockholders of each corporation by a vote in favor thereof, at a general or special meeting of such stockholders, by the holders of a majority in amount of all the outstanding capital stock of the company.

History: En. Sec. 704, 5th Div. Comp. Stat. 1887; re-en. Sec. 912, Civ. C. 1895; re-en. Sec. 4923, Rev. C. 1907; re-en. Sec. 6525, R.C.M. 1921; Cal. Civ. C. Sec. 473a; re-en. Sec. 6525, R.C.M. 1935; R.C.M. 1947, 72-223(part); amd. Sec. 46, Ch. 43, L. 1979.

69-14-514. Interrailroad business arrangements and out-of-state operations. (1) Any railroad company incorporated pursuant to the laws of this state, the United States, or any state or territory of the United States may at any time, by means of subscription to the capital stock of any other railroad company or by the purchase of its stock or bonds or by guaranteeing its bonds or otherwise, aid such company in the construction of its railroad within or without this state and may take, purchase, hold, sell, and dispose of or guarantee the payment of the capital, stock, bonds, and securities of any other railroad corporation whose line of railroad within this state is continuous of or connects with its own line.

(2) Any company owning or operating a railroad within this state may:

(a) extend the same into any other state or territory;

(b) build, buy, lease, or consolidate with any railroad or railroads in such other state or territory;

(c) operate the same; and

(d) own such real estate and other property in such other state or territory as may be necessary or convenient in the operation of such road.

(3) Such purchase, sale, consolidation with, or lease may be made or such aid furnished upon such terms or conditions as may be agreed upon by the directors or trustees of the respective companies, but the same shall be approved or ratified by persons holding or representing a majority in amount of the capital stock of each of such companies, respectively, at any annual stockholders' meeting or at a special meeting of the stockholders called for that purpose or by approval in writing of a majority in interest of the stockholders of each company respectively.

(4) Before any railroad corporation organized under the laws of any other state or territory or of the United States shall be permitted to avail itself of the benefits of this section, such corporation shall file with the secretary of state a true copy of its charter or articles of incorporation.

History: En. Sec. 1, p. 157, L. 1893; re-en. Sec. 923, Civ. C. 1895; re-en. Sec. 4299, Rev. C. 1907; re-en. Sec. 6531, R.C.M. 1921; re-en. Sec. 6531, R.C.M. 1935; R.C.M. 1947, 72-229; amd. Sec. 47, Ch. 43, L. 1979.

69-14-515. Acceptance of federal laws by railroad. Any such corporations may accept the provisions of any act of congress providing for the creation of bodies corporate for the purposes of this part, but such acceptance shall not impair or affect the legal or equitable rights of any creditor as they exist at the time of such acceptance.

History: En. Sec. 22, p. 104, Ex. L. 1873; re-en. Sec. 320, 5th Div. Rev. Stat. 1879; re-en. Sec. 699, 5th Div. Comp. Stat. 1887; re-en. Sec. 907, Civ. C. 1895; re-en. Sec. 4288, Rev. C. 1907; re-en. Sec. 6520, R.C.M. 1921; re-en. Sec. 6520, R.C.M. 1935; R.C.M. 1947, 72-218.

69-14-516 through 69-14-530 reserved.

69-14-531. Authorization to operate railroad. Any railroad corporation shall be authorized to locate, construct, maintain, and operate a railroad with a single or double track, with such sidetracks, turnouts, machine shops, offices, and depots as may be necessary, between any points it may select within the places named in the articles of incorporation as termini of such road. It may construct branches to any point in this state and connect its road with that belonging to any other person or corporation and may consolidate with any road not a parallel or competing line.

History: En. Sec. 4, p. 93, Ex. L. 1873; re-en. Sec. 302, 5th Div. Rev. Stat. 1879; re-en. Sec. 680, 5th Div. Comp. Stat. 1887; amd. Sec. 890, Civ. C. 1895; re-en. Sec. 4271, Rev. C. 1907; re-en. Sec. 6503, R.C.M. 1921; Cal. Civ. C. Secs. 454-496; re-en. Sec. 6503, R.C.M. 1935; R.C.M. 1947, 72-201.

69-14-532. Authority to plan, lay out, and construct rail lines. Every railroad corporation may:

(1) cause such examination and surveys to be made as may be necessary to the selection of the most advantageous route for the railroad;

(2) lay out its road, not exceeding in width 100 feet on each side of its centerline, unless a greater width is required for the purpose of excavation or embankment, and construct and maintain the same, with a single or double track and with such appendages and adjuncts as may be necessary for the convenient use of the same;

(3) construct its road across, along, or upon any stream of water, watercourse, roadstead, bay, navigable stream, street, avenue, or highway or across any railway, canal, ditch, or flume which the route of its road intersects, crosses, or runs along, in such manner as to afford security for life and property; but the corporation shall restore the stream or watercourse, road, street, avenue, highway, railroad, canal, ditch, or flume thus intersected to its former state of usefulness, as near as possible, or so that the railroad shall not unnecessarily impair its usefulness or injure its franchise;

(4) erect and maintain all necessary and convenient buildings, stations, depots, fixtures, and machinery for the accommodation and use of its passengers, freight, and business;

(5) change the line of its road, in whole or in part, whenever a majority of the directors so determine, as is provided in 69-14-534; but no such change may vary the general route of such road, as contemplated in its articles of incorporation.

History: En. Sec. 894, Civ. C. 1895; re-en. Sec. 4275, Rev. C. 1907; re-en. Sec. 6507, R.C.M. 1921; Cal. Civ. C. Sec. 465; re-en. Sec. 6507, R.C.M. 1935; R.C.M. 1947, 72-205(part); amd. Sec. 48, Ch. 43, L. 1979.

69-14-533. Authority to enter land for survey purposes. For the purposes of 69-14-532(1), the officers, agents, and employees of a railroad corporation may enter upon the lands or waters of any person, subject to liability for all damages which they do thereto.

History: En. Sec. 894, Civ. C. 1895; re-en. Sec. 4275, Rev. C. 1907; re-en. Sec. 6507, R.C.M. 1921; Cal. Civ. C. Sec. 465; re-en. Sec. 6507, R.C.M. 1935; R.C.M. 1947, 72-205(part).

69-14-534. Change of location or grade. Whenever any corporation organized under this part shall find it necessary, for the purpose of avoiding annoyance to public travel, dangerous or difficult curves or grades, or unsafe or unsubstantial grounds or foundations or for other reasonable causes, to change the location or grade of any portion of its road, such railroad corporation is hereby authorized to make such changes, not departing from the general route prescribed in the articles of incorporation.

History: En. Sec. 13, p. 102, Ex. L. 1873; re-en. Sec. 311, 5th Div. Rev. Stat. 1879; re-en. Sec. 690, 5th Div. Comp. Stat. 1887; re-en. Sec. 898, Civ. C. 1895; re-en. Sec. 4279, Rev. C. 1907; re-en. Sec. 6512, R.C.M. 1921; re-en. Sec. 6512, R.C.M. 1935; R.C.M. 1947, 72-210.

69-14-535. Crossing of roads and streams. It shall be lawful for such corporation, whenever it may be necessary in the construction of its road to cross any road or stream of water, to divert the same from its present location or bed, but such corporation shall, without unnecessary delay, place such road or stream in such condition as not to impair its former usefulness.

History: En. Sec. 16, p. 103, Ex. L. 1873; re-en. Sec. 314, 5th Div. Rev. Stat. 1879; re-en. Sec. 693, 5th Div. Comp. Stat. 1887; re-en. Sec. 901, Civ. C. 1895; re-en. Sec. 4282, Rev. C. 1907; re-en. Sec. 6515, R.C.M. 1921; re-en. Sec. 6515, R.C.M. 1935; R.C.M. 1947, 72-213.

69-14-536. Extension of rail lines into Montana. (1) Any railroad corporation chartered by or organized under the laws of the United States or of any state or territory may extend, construct, maintain, and operate its railroad into and through this state to any place within the state and may build branches from any point on such extension or continuation of any such extension or branch. Before making such extension into the state or building any such branch road or any such continuation, the corporation shall, by resolution of its board of directors, to be entered in the records of its proceedings, designate the general route of such proposed extension, branch, or continuation and file a copy of such record, certified by the president and secretary, in the office of the secretary of state, who shall record the same when presented for record. Thereupon such corporations shall have all the rights, powers, privileges, immunities, and franchises to make, maintain, and operate such extension and build, maintain, and operate such branch or continuation, including the right of eminent domain, which it would have had if it had been incorporated for such purposes under the general laws of Montana. Any corporation of another state or of the United States extending its railroad or any portion thereof into or through this state:

(a) shall establish and maintain an office or offices in this state at some point or points on its line at which legal process and notice may be served, as upon railroad corporations of this state; and

(b) is subject to taxation and regulation and control by the laws of this state, in all respects the same as if the line were constructed by corporations organized under the laws of this state.

(2) Before any railroad corporation organized under the laws of any other state or territory or of the United States shall be permitted to avail itself of the benefits of this section, such corporation shall file with the secretary of state a true copy of its charter or articles of incorporation.

History: En. Sec. 702, 5th Div. Comp. Stat. 1887; re-en. Sec. 910, Civ. C. 1895; re-en. Sec. 4291, Rev. C. 1907; re-en. Sec. 6523, R.C.M. 1921; re-en. Sec. 6523, R.C.M. 1935; R.C.M. 1947, 72-221; amd. Sec. 49, Ch. 43, L. 1979.

69-14-537. Annual work and completion of road. (1) Organization under this part shall not be deemed to confer any right to any portion of its line as designated in its articles of incorporation on which a preliminary survey and location shall not have been made.

(2) Every railroad corporation shall be required to complete 15 miles upon each of its lines, branches, or extensions each year subsequent to the filing of articles of incorporation. Each railroad corporation shall complete the whole line of its road within 7 years from the date of filing articles of incorporation.

(3) If such corporation shall fail to comply with the requirements of this section, it shall forfeit its charter and all the rights and privileges conferred by said articles as to any incompleted portion of its line of road. Upon the written application of any county attorney of a county through which the line of said road would pass, made to the district court, setting forth the alleged cause of such forfeiture, it shall be the duty of such court, after notice to the corporation, to examine the cause and if, in the court's judgment, sufficient cause exists for such forfeiture, to declare and enforce the forfeiture.

History: En. Sec. 12, p. 101, Ex. L. 1873; re-en. Sec. 310, 5th Div. Rev. Stat. 1879; amd. Sec. 1, p. 37, L. 1883; re-en. Sec. 688, 5th Div. Comp. Stat. 1887; amd. Sec. 896, Civ. C. 1895; re-en. Sec. 4277, Rev. C. 1907; re-en. Sec. 6510, R.C.M. 1921; re-en. Sec. 6510, R.C.M. 1935; R.C.M. 1947, 72-208.

69-14-538. Railroads on Indian and military reservations. Any railroad corporation organized under the laws of this state for the purpose of building railroads which extend upon Indian or military reservations within this state shall not forfeit its charter or any rights or privileges by reason of its failure to build and complete any portion of its road upon such reservations until a grant of a right-of-way therefor has been obtained from the United States or any parties authorized in that behalf, and thereafter the provisions of this part shall be applicable to said corporations.

History: En. Sec. 689, 5th Div. Comp. Stat. 1887; re-en. Sec. 897, Civ. C. 1895; re-en. Sec. 4278, Rev. C. 1907; re-en. Sec. 6511, R.C.M. 1921; re-en. Sec. 6511, R.C.M. 1935; R.C.M. 1947, 72-209.

69-14-539. Connections between lines of different railroads. Every railroad corporation has power to cross, intersect, join, or unite its railroad with any other railroad, either before or after construction, at any point upon its route and upon the grounds of such other railroad corporation, with the necessary turnouts, sidings, and switches and other conveniences in furtherance of the objects of its connections. Every corporation whose railroad is or shall be hereafter intersected by any new railroad shall unite with the owners of such new railroad in forming such intersections and connections and grant facilities therefor. If the two corporations cannot agree upon the amount of compensation to be made therefor or the points or the manner of such crossings, intersections, and connections, the same shall be ascertained and determined as is provided in Title 70, chapter 30.

History: En. Sec. 894, Civ. C. 1895; re-en. Sec. 4275, Rev. C. 1907; re-en. Sec. 6507, R.C.M. 1921; Cal. Civ. C. Sec. 465; re-en. Sec. 6507, R.C.M. 1935; R.C.M. 1947, 72-205(part).

69-14-540 through 69-14-550 reserved.

69-14-551. Establishment of principal office. Every such corporation shall, as soon as convenient after its organization, establish a principal office at some point on the line of its road and may change the same at pleasure, giving public notice in one or more newspapers in the state having the largest circulation and giving notice to the secretary of state of such establishment or change.

History: En. Sec. 17, p. 103, Ex. L. 1873; re-en. Sec. 315, 5th Div. Rev. Stat. 1879; re-en. Sec. 694, 5th Div. Comp. Stat. 1887; re-en. Sec. 902, Civ. C. 1895; re-en. Sec. 4283, Rev. C. 1907; re-en. Sec. 6516, R.C.M. 1921; re-en. Sec. 6516, R.C.M. 1935; R.C.M. 1947, 72-214.

69-14-552. Authority to hold and transfer property. Every railroad corporation has power to:

(1) receive, hold, take, and convey, by deed or otherwise, as a natural person, such voluntary grants and donations of real estate and other property which may be made to it to aid and encourage the construction, maintenance, and accommodation of such railroad;

(2) purchase or by voluntary grants or donations receive, enter, take possession of, hold, and use all such real estate and other property as may be absolutely necessary for the construction and maintenance of such railroad and for all stations, depots, and other purposes necessary to successfully work and conduct the business of the road;

(3) purchase lands, timber, stone, gravel, or other materials to be used in the construction and maintenance of its road and all necessary appendages and adjuncts or acquire them in the manner provided in Title 70, chapter 30, for the condemnation of lands.

History: En. Sec. 894, Civ. C. 1895; re-en. Sec. 4275, Rev. C. 1907; re-en. Sec. 6507, R.C.M. 1921; Cal. Civ. C. Sec. 465; re-en. Sec. 6507, R.C.M. 1935; R.C.M. 1947, 72-205(part).

69-14-553. Acquisition and transfer of real estate. Any such corporation may acquire by purchase or gift any lands in the vicinity of its road or through which the same may pass, so far as may be convenient or necessary to secure the right-of-way or such as may be granted to aid in the construction of such road and convey the same in such manner as the directors may prescribe. All deeds and conveyances made by such corporation shall be signed by the president, under the seal of the corporation.

History: En. Sec. 15, p. 102, Ex. L. 1873; re-en. Sec. 313, 5th Div. Rev. Stat. 1879; re-en. Sec. 692, 5th Div. Comp. Stat. 1887; re-en. Sec. 900, Civ. C. 1895; re-en. Sec. 4281, Rev. C. 1907; re-en. Sec. 6514, R.C.M. 1921; re-en. Sec. 6514, R.C.M. 1935; R.C.M. 1947, 72-212.

69-14-554. Right-of-way through canyons. (1) Any such corporation whose right-of-way or whose track upon such right-of-way extends through any canyon, pass, or defile shall not exclude any other such corporation from a passage through the same upon equitable terms. In case of disagreement, upon application of either of the parties, with notice to the other, the same shall be adjusted by a court of competent jurisdiction. If it shall become necessary for any other railroad company passing through the state to cross or pass any other railroad track or defile already constructed or surveyed, the same may be so done without any compensation therefor, except the actual damage done by so doing. When two or more companies desire to pass through the same canyon, pass, or defile, neither shall exclude the other from passing through the same and neither shall have any compensation therefor, except the actual damage done by so doing. Should it be necessary that the said companies should use the same track or bed in passing through such canyon, pass, or defile, the same may be done without any compensation therefor from one to the other, except the actual damage by so doing.

(2) If the passage of any such railroad through the canyon, pass, or defile causes the disuse or change of location of any public wagon road that may traverse the same, damages shall be awarded therefor, as provided by law.

History: En. Sec. 11, p. 100, Ex. L. 1873; re-en. Sec. 309, 5th Div. Rev. Stat. 1879; re-en. Sec. 687, 5th Div. Comp. Stat. 1887; re-en. Sec. 895, Civ. C. 1895; re-en. Sec. 4276, Rev. C. 1907; re-en. Sec. 6509, R.C.M. 1921; re-en. Sec. 6509, R.C.M. 1935; R.C.M. 1947, 72-207.

69-14-555. Judgment liens against railroad property. A judgment against any railroad corporation for any injury to person or property or for material furnished or work or labor done upon any of the property of such corporation shall be a lien within the county where recovered on the property of such corporation, and such lien shall be prior and superior to the lien of any mortgage or trust deed provided for in this part.

History: En. Sec. 707, 5th Div. Comp. Stat. 1887; re-en. Sec. 914, Civ. C. 1895; re-en. Sec. 4295, Rev. C. 1907; re-en. Sec. 6527, R.C.M. 1921; re-en. Sec. 6527, R.C.M. 1935; R.C.M. 1947, 72-225.

69-14-556. Authorization to borrow money and secure payment. Any corporation organized under this part:

(1) shall have power to borrow money on the credit of the corporation to an amount not exceeding its authorized capital stock, at a rate of interest to be agreed upon by the respective parties; and

(2) may execute bonds therefor in sum of not less than $100 and secure the payment thereof by mortgage or pledge of the property and income of such corporation.

History: En. Sec. 14, p. 102, Ex. L. 1873; re-en. Sec. 312, 5th Div. Rev. Stat. 1879; re-en. Sec. 691, 5th Div. Comp. Stat. 1887; re-en. Sec. 899, Civ. C. 1895; re-en. Sec. 4280, Rev. C. 1907; re-en. Sec. 6513, R.C.M. 1921; re-en. Sec. 6513, R.C.M. 1935; amd. Sec. 11-148, Ch. 264, L. 1963; R.C.M. 1947, 72-211.

69-14-557. State not liable for obligations of railroad. Nothing in this part shall be construed to make the state or any municipality therein liable for any debts or obligations of any character which may be contracted by such corporations.

History: En. Sec. 19, p. 104, Ex. L. 1873; re-en. Sec. 317, 5th Div. Rev. Stat. 1879; re-en. Sec. 696, 5th Div. Comp. Stat. 1887; re-en. Sec. 904, Civ. C. 1895; re-en. Sec. 4285, Rev. C. 1907; re-en. Sec. 6518, R.C.M. 1921; re-en. Sec. 6518, R.C.M. 1935; R.C.M. 1947, 72-216.

69-14-558. Transportation of passengers and property. Every railroad corporation has power to:

(1) carry persons and property on their railroad and receive tolls or compensation therefor;

(2) regulate the time and manner in which passengers and property shall be transported and the tolls and compensation to be paid therefor within the limits prescribed by law and subject to alteration, change, or amendment by the legislature at any time.

History: En. Sec. 894, Civ. C. 1895; re-en. Sec. 4275, Rev. C. 1907; re-en. Sec. 6507, R.C.M. 1921; Cal. Civ. C. Sec. 465; re-en. Sec. 6507, R.C.M. 1935; R.C.M. 1947, 72-205(part).

69-14-559. Maintenance of hotels in parks and along lines. Any railway company or corporation, organizing under the laws of the United States, the state of Montana, or of any other state or territory and owning or operating a line of railway in the state of Montana, may, in connection with its railway business, construct, acquire, own, operate, and maintain, in or on public or national parks traversed, touched, or reached by its line of railway in the state of Montana and at convenient points along its line, hotels, inns, and restaurants for the accommodation of the employees and patrons of said railway company or corporation, either in its own name or in the name of another corporation, provided that the stock of such other corporation is owned or controlled by said railway company or corporation.

History: **En. Sec. 1, Ch. 82, L. 1915; re-en. Sec. 6508, R.C.M. 1921; re-en. Sec. 6508, R.C.M. 1935; R.C.M. 1947, 72-206.**

69-14-560. Regulation of rates of railroad corporations. Any railroad corporation within this state shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined for the first offense in the sum of $1,000, for the second violation of the same provision, $2,000, and for every other and further violation of any provision of which it has been twice before found guilty, a sum not less than $5,000 or more than $10,000, if the corporation shall:

(1) ask, charge, or demand any exorbitant rate of compensation for the transportation of any freight, baggage, express matter, or passenger;

(2) make any unjust discrimination in its rates;

(3) willfully neglect to keep a table of its passenger tariff and rates of freight conspicuously posted in each depot within this state.

History: **En. Sec. 23, p. 104, Ex. L. 1873; re-en. Sec. 321, 5th Div. Rev. Stat. 1879; re-en. Sec. 700, 5th Div. Comp. Stat. 1887; amd. Sec. 908, Civ. C. 1895; amd. Sec. 1, Ch. 66, L. 1903; re-en. Sec. 4289, Rev. C. 1907; re-en. Sec. 6521, R.C.M. 1921; amd. Sec. 1, Ch. 7, L. 1929; re-en. Sec. 6521, R.C.M. 1935; R.C.M. 1947, 72-219(part).**

69-14-561. Regulation of railroad equipment. Every railroad corporation has power to:

(1) regulate the force and speed of their locomotives, cars, trains, or other machinery used and employed on their road; and

(2) establish, execute, and enforce all needful and proper rules for the management of its business transactions usual and proper for railroad corporations.

History: **En. Sec. 894, Civ. C. 1895; re-en. Sec. 4275, Rev. C. 1907; re-en. Sec. 6507, R.C.M. 1921; Cal. Civ. C. Sec. 465; re-en. Sec. 6507, R.C.M. 1935; R.C.M. 1947, 72-205(part).**

69-14-562. Regulation of health and safety on railroads. Any railroad corporation within this state shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined for the first offense in the sum of $1,000, for the second violation of the same provision, $2,000, and for every other and further violation of any provision of which it has been twice before found guilty, a sum not less than $5,000 or more than $10,000, if the corporation shall:

(1) neglect to provide comfortable and convenient cars or coaches for the transportation of its passengers and their baggage or safe cars for the transportation of express matter and freight;

(2) use any highly inflammable oils for lighting any car on its passenger trains;

(3) transport within this state on any of its passenger cars any oil of vitriol, gunpowder, lucifer matches, nitroglycerine, glynon oil, nytroleum or blasting oil, nitrate oil, powder mixed with any such oil or fiber saturated

therewith, duolin or giant powder, blasting powder, or other goods of a dangerous nature;

(4) in any incorporated city or town in this state, run any train at a rate of speed forbidden by the laws of this state or the ordinances of such city or town;

(5) run any train over any unsafe bridge, trestlework, or aqueduct in this state;

(6) fail to have upon any locomotive in use by it in this state a bell and whistle in fit condition for use thereon;

(7) permit any locomotive to approach any highway, road, or railroad crossing without causing the whistle to be sounded at a point between 50 and 80 rods from the crossing, the bell to be rung from said point until the crossing is reached;

(8) willfully fail to make any report herein required or which may be hereafter required by any law of this state.

History: En. Sec. 23, p. 104, Ex. L. 1873; re-en. Sec. 321, 5th Div. Rev. Stat. 1879; re-en. Sec. 700, 5th Div. Comp. Stat. 1887; amd. Sec. 908, Civ. C. 1895; amd. Sec. 1, Ch. 66, L. 1903; re-en. Sec. 4289, Rev. C. 1907; re-en. Sec. 6521, R.C.M. 1921; amd. Sec. 1, Ch. 7, L. 1929; re-en. Sec. 6521, R.C.M. 1935; R.C.M. 1947, 72-219(part).

69-14-563. Construction and operation of telegraph line. Any such corporation is hereby authorized to construct, maintain, and operate a telegraph line along its road.

History: En. Sec. 18, p. 103, Ex. L. 1873; re-en. Sec. 316, 5th Div. Rev. Stat. 1879; re-en. Sec. 695, 5th Div. Comp. Stat. 1887; re-en. Sec. 903, Civ. C. 1895; re-en. Sec. 4284, Rev. C. 1907; re-en. Sec. 6517, R.C.M. 1921; re-en. Sec. 6517, R.C.M. 1935; R.C.M. 1947, 72-215(part).

Part 6

Railroad Highway Crossings

69-14-601. Definition of railroad company. The words "railroad company", as used in 69-14-601 through 69-14-611, shall be taken and construed to mean any corporation, person, or association of persons owning or operating a railroad.

History: En. Sec. 12, Ch. 148, L. 1919; re-en. Sec. 6636, R.C.M. 1921; re-en. Sec. 6636, R.C.M. 1935; R.C.M. 1947, 72-712.

69-14-602. Construction and maintenance of railroad crossings outside of incorporated cities and towns. At all places in the state, outside of incorporated cities and towns where a lawfully established public highway crosses any railroad, it shall be the duty of the railroad company owning or operating such railroad to construct and thereafter maintain in proper condition a good and safe crossing.

History: En. Sec. 1, Ch. 148, L. 1919; re-en. Sec. 6625, R.C.M. 1921; re-en. Sec. 6625, R.C.M. 1935; R.C.M. 1947, 72-701.

69-14-603. Railroad crossings in unincorporated towns or villages. In any unincorporated community ordinarily known as a village or town where the public necessity and convenience require a railroad crossing at the intersection of the railroad with any street or highway, whether lawfully established or otherwise, which is commonly used by the public, the board of county commissioners of the county may order the construction and maintenance of such railroad crossing. Upon such order becoming final and effective, it shall be the duty of the railroad company to construct and maintain in proper condition a good and safe crossing. The board of county commissioners may order more than one railroad crossing in such unincorporated community, as provided in this section, when the public necessity and convenience require more than one such crossing to afford reasonable facilities for public travel.

History: En. Sec. 2, Ch. 148, L. 1919; re-en. Sec. 6626, R.C.M. 1921; re-en. Sec. 6626, R.C.M. 1935; R.C.M. 1947, 72-702.

69-14-604. Procedure to order construction of crossing. Whenever any board of county commissioners shall order the construction of any railroad crossing, said board shall enter an order upon its minutes, specifying the place of such crossing. A copy of said order shall be served upon the railroad company, and a copy shall also be immediately mailed to the public service commission. Service of said order may be made upon the railroad company by delivering such copy to any station agent employed in connection with the operation of said railroad in said county.

History: En. Sec. 3, Ch. 148, L. 1919; re-en. Sec. 6627, R.C.M. 1921; re-en. Sec. 6627, R.C.M. 1935; amd. Sec. 21, Ch. 315, L. 1974; R.C.M. 1947, 72-703.

69-14-605. Time for completion of crossing. It shall be the duty of a railroad company to construct a crossing ordered by the board of county commissioners of any county within 60 days after service of such order; provided, however, that in case any crossing shall be ordered requiring any extended period of construction, such additional time as is reasonably necessary to complete the same shall be allowed by the commission upon the proper application for such extension.

History: En. Sec. 4, Ch. 148, L. 1919; re-en. Sec. 6628, R.C.M. 1921; re-en. Sec. 6628, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-704.

69-14-606. Role of public service commission with respect to crossings. (1) The commission may enforce the orders of any board of county commissioners for the construction of railroad crossings and may pass upon the reasonableness of any such order and modify, change, or annul the same.

(2) Whenever any railroad crossing has been ordered by the county commissioners, as herein provided, the railroad company may, within 30 days after the service of such order, serve upon the commission a notice stating why the order is considered unreasonable or unjust and requesting that the commission hold a hearing for the purpose of determining whether or not the construction of such crossing should reasonably be required. The commission shall thereupon institute a hearing for this purpose, and all interested parties shall be given reasonable notice and an opportunity to be heard. The commission may, after such hearing, either affirm, modify, or annul such order.

History: En. Secs. 5, 6, Ch. 148, L. 1919; re-en. Secs. 6629, 6630, R.C.M. 1921; re-en. Secs. 6629, 6630, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-705, 72-706; amd. Sec. 50, Ch. 43, L. 1979.

69-14-607. Overhead or underground crossings. (1) No railroad crossing, other than a grade crossing, shall be ordered by any board of county commissioners.

(2) (a) The public service commission may, however, upon petition or request in writing of any board of county commissioners, order an overhead or underground crossing at any place where a railroad crossing has not been constructed and is required by the provisions of 69-14-601 through 69-14-611; provided, in its judgment, the safety, necessity, and convenience of the traveling public require such crossing.

(b) When any such petition or request is presented, the commission shall fix a date for hearing the same and shall give at least 10 days' written notice to the board of county commissioners and the owner or operator of the railroad to be affected by such order of the time fixed for the hearing. At such hearing, the commission shall hear all testimony offered as to the safety, necessity, and convenience of the traveling public requiring such a crossing and the expense of constructing and maintaining the same and shall make such investigation and inspection of the conditions at the place of crossing as may be deemed necessary or advisable and shall thereupon determine whether such order should be made.

(3) In the event an overhead or underground crossing is ordered, the commission may in its discretion require the same to be constructed and maintained by and at the expense of the railroad company or may apportion the expense between the railroad company and the county in which said crossing is located. The part of the expense apportioned to said county, if any, shall be paid to the railroad company from the funds of said county properly applicable to the payment of such expense.

History: En. Sec. 7, Ch. 148, L. 1919; re-en. Sec. 6631, R.C.M. 1921; re-en. Sec. 6631, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-707.

69-14-608. Court action to determine justness and reasonableness of commission order. The board of county commissioners or the railroad company affected by an order or decision of the commission made pursuant to the provisions of 69-14-601 through 69-14-611 may commence an action in any court having jurisdiction to determine the justness and reasonableness of such order or decision. In any such action the order or decision sought to be reviewed shall prima facie be deemed just, reasonable, and proper.

History: En. Sec. 8, Ch. 148, L. 1919; re-en. Sec. 6632, R.C.M. 1921; re-en. Sec. 6632, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-708.

69-14-609. Extension of time to comply with order. In the event of an application to the commission to review any order made by the board of county commissioners and in the event of any action to review any order or decision of the commission, as herein provided, the time within which to comply with said order shall be extended and the railroad company shall have 60 days after the order or decision becomes final and effective within which to comply with the same. The time for compliance as herein provided may be extended, for good cause shown, by the commission.

History: En. Sec. 9, Ch. 148, L. 1919; re-en. Sec. 6633, R.C.M. 1921; re-en. Sec. 6633, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-709.

69-14-610. Effect of crossing provisions on liability of railroad. Nothing contained in 69-14-601 through 69-14-611 shall in any way affect the liability of any railroad company for damage to persons or property injured at any crossings.

History: En. Sec. 10, Ch. 148, L. 1919; re-en. Sec. 6634, R.C.M. 1921; re-en. Sec. 6634, R.C.M. 1935; R.C.M. 1947, 72-710.

69-14-611. Penalty for failure to comply with crossing order. Any railroad company failing to construct any crossing after the order or decision requiring the construction of same has become final, within the time herein provided or within any extension of time granted by the commission, shall for each day's failure pay to the state a fine of not less than $10 or more than $100, to be recovered in a civil action in the name of the state, and it shall be the duty of the county attorney of the county within which is located the site of the proposed crossing to prosecute such action.

History: En. Sec. 11, Ch. 148, L. 1919; re-en. Sec. 6635, R.C.M. 1921; re-en. Sec. 6635, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-711.

69-14-612 through 69-14-620 reserved.

69-14-621. Authorization for commission to order installation of signaling devices at crossings. (1) Authority is hereby given to the commission, upon petition in writing made to it by any board of county commissioners of the state, to order railroad companies to install and maintain an electrically operated bell or other signaling device at all points in the state where the main lines, spurs, or switches of any railroad in continuous operation and use, owned or operated by them, cross any public highway now lawfully established or hereafter laid out within the state and where the contour of the country adjacent to said crossing is such that a person approaching the same along said highway cannot, at a distance of 25 feet of said crossing, obtain an unobstructed view of said railroad track for a distance of one-half mile on either side of said crossing or where any other hazardous conditions exist which make it advisable that electric signaling devices be installed.

(2) Nothing herein contained shall be so construed as to authorize the commission to order the installation of signaling devices except upon petition of a board of county commissioners and after a hearing as provided for.

History: (1)En. Sec. 1, Ch. 151, L. 1919; re-en. Sec. 3842, R.C.M. 1921; re-en. Sec. 3842, R.C.M. 1935; amd. Sec. 1, Ch. 115, L. 1957; amd. Sec. 20, Ch. 315, L. 1974; Sec. 72-164, R.C.M. 1947; (2)En. Sec. 4, Ch. 151, L. 1919; re-en. Sec. 3845, R.C.M. 1921; re-en. Sec. 3845, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; Sec. 72-167, R.C.M. 1947; R.C.M. 1947, 72-164(part), 72-167(part).

69-14-622. Petition for installation — hearing and order. (1) It shall be the duty of the commission, upon the presentation of any petition by a board of county commissioners requesting the installation of the signaling device provided for in 69-14-621, to hold a hearing if the same be demanded by the railway company or companies affected, upon due notice to all interested parties in such manner as the commission shall direct.

(2) Upon said hearing if a hearing be demanded or without a hearing if the same has not been demanded, the commission shall make such order as it sees fit and shall, in its discretion, order or refuse to order the installation of the signaling devices as petitioned for by said board of county commissioners.

History: En. Sec. 2, Ch. 151, L. 1919; re-en. Sec. 3843, R.C.M. 1921; re-en. Sec. 3843, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-165.

69-14-623. Construction and requirements of signaling devices. All electric bells or other signaling devices required by 69-14-621 through 69-14-625 to be installed, upon direction of the commission, shall be so constructed that they will operate automatically upon the approach of a train and will commence sounding when any approaching train is at such distance from said crossing as the commission may determine and order and shall continue to sound until the train has reached said crossing.

History: En. Sec. 3, Ch. 151, L. 1919; re-en. Sec. 3844, R.C.M. 1921; re-en. Sec. 3844, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-166.

69-14-624. Time period to complete installation. It shall be the duty of every person, firm, or corporation owning or operating any line of railroad within the state to equip its crossing with the signaling device herein described within 3 months after being ordered by the commission to do so.

History: En. Sec. 4, Ch. 151, L. 1919; re-en. Sec. 3845, R.C.M. 1921; re-en. Sec. 3845, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-167(part).

69-14-625. Penalty for noncompliance with commission order relating to signaling device. Any railroad company, person, firm, or corporation failing to comply with the terms of 69-14-621 through 69-14-624 or failing to equip its lines with its signaling device herein described, when ordered by the commission to do so, within the time specified by said order, shall forfeit to the state the sum of $50 for each and every failure to equip each crossing under its control with the signaling device required by 69-14-621 through 69-14-624. Each day's failure to comply with the terms of 69-14-621 through 69-14-624 shall constitute a separate offense and shall give rise to a like liability.

History: En. Sec. 5, Ch. 151, L. 1919; re-en. Sec. 3846, R.C.M. 1921; re-en. Sec. 3846, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-168.

69-14-626. Prohibition on extended obstruction of highway crossings. (1) It shall be unlawful for any corporation, association, or company to willfully obstruct, blockade, interfere with, or prevent the free use of any public highway within the state where such highway crosses any railroad track outside of incorporated cities and towns by stopping any railroad train, car, engine, or locomotive for more than 15 minutes at any one time or by placing, depositing, or leaving any article or thing whatsoever on any railroad track at the point where any public highway crosses such track outside of incorporated cities and towns.

(2) Any corporation, association, or company so obstructing, blockading, or interfering with the free use of any such highway shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $25 or more than $100. This section shall not be construed as repealing any existing laws prohibiting encroachments upon or obstruction of public highways.

History: En. Sec. 1, Ch. 43, L. 1907; Sec. 4358, Rev. C. 1907; re-en. Sec. 6595, R.C.M. 1921; re-en. Sec. 6595, R.C.M. 1935; R.C.M. 1947, 72-640.

Part 7

Protection of Livestock and Agricultural Resources

69-14-701. Maintenance of fences. (1) Railroad corporations must make and maintain a good and legal fence on both sides of their track and property and maintain cattle guards at all crossings over which cattle or other domestic animals cannot pass.

(2) In case they do not make and maintain such fence and guards, if their engines or cars shall kill or maim any cattle or other domestic animals upon their line of road, they must pay to the owner of such cattle or other domestic animals, in all cases, a fair market price for the same, unless it occurred through the neglect or fault of the owner of the animal so killed or maimed; provided, that nothing herein shall be construed so as to prevent any person from recovering damages from any railroad corporation for its negligent killing or injury to any cattle or other domestic animals at spurs, sidings, Y's, crossings, and turntables.

History: En. Sec. 1, p. 267, L. 1891; en. Sec. 950, Civ. C. 1895; amd. Sec. 1, Ch. 29, L. 1905; amd. Sec. 1, Ch. 59, L. 1907; re-en. Sec. 4308, Rev. C. 1907; re-en. Sec. 6540, R.C.M. 1921; Cal. Civ. C. Sec. 485; re-en. Sec. 6540, R.C.M. 1935; R.C.M. 1947, 72-401.

69-14-702. Crossings to be maintained. (1) Any railroad corporation or lessee, person, company, or corporation operating any railroad in this state which may fence its right-of-way shall make crossings through its fence and over its roadbed along its right-of-way every 4 miles thereof or as near thereat as may be practicable.

(2) Such openings shall not be less than 60 feet in width.

History: (1)En. Sec. 1, p. 148, L. 1893; re-en. Sec. 959, Civ. C. 1895; re-en. Sec. 4318, Rev. C. 1907; re-en. Sec. 6552, R.C.M. 1921; re-en. Sec. 6552, R.C.M. 1935; Sec. 72-502, R.C.M. 1947; (2)En. Sec. 2, p. 148, L. 1893; re-en. Sec. 960, Civ. C. 1895; re-en. Sec. 4319, Rev. C. 1907; re-en. Sec. 6553, R.C.M. 1921; re-en. Sec. 6553, R.C.M. 1935; Sec. 72-503, R.C.M. 1947; R.C.M. 1947, 72-502, 72-503(part).

69-14-703. Placement of cattle guards. The railroad company or lessee, person, company, or corporation operating any railroad shall place cattle guards on either side of the openings required by 69-14-702, sufficient to prevent any cattle from entering upon the right-of-way enclosed.

History: En. Sec. 2, p. 148, L. 1893; re-en. Sec. 960, Civ. C. 1895; re-en. Sec. 4319, Rev. C. 1907; re-en. Sec. 6553, R.C.M. 1921; re-en. Sec. 6553, R.C.M. 1935; R.C.M. 1947, 72-503(part).

69-14-704. Openings under trestles. The railroad company, lessee, person, or company operating any railroad, in addition to the openings required by 69-14-702, shall leave unfenced any places where the railroad runs over trestles that are sufficiently high for cattle to go underneath the same.

History: En. Sec. 3, p. 148, L. 1893; re-en. Sec. 961, Civ. C. 1895; re-en. Sec. 4320, Rev. C. 1907; re-en. Sec. 6554, R.C.M. 1921; re-en. Sec. 6554, R.C.M. 1935; R.C.M. 1947, 72-504.

69-14-705. Application of provisions dealing with crossings. The provisions of 69-14-702 through 69-14-706 shall only apply to grazing country.

History: En. Sec. 4, p. 148, L. 1893; re-en. Sec. 962, Civ. C. 1895; re-en. Sec. 4321, Rev. C. 1907; re-en. Sec. 6555, R.C.M. 1921; re-en. Sec. 6555, R.C.M. 1935; R.C.M. 1947, 72-505.

69-14-706. Violation of crossing provisions. Any railroad corporation or lessee, person, company, or corporation operating any railroad in this state violating the provisions of 69-14-702 through 69-14-705 shall be deemed guilty of a misdemeanor and upon conviction thereof in any court of competent jurisdiction shall be fined in a sum not less than $100 and not more than $500.

History: En. Sec. 5, p. 148, L. 1893; re-en. Sec. 963, Civ. C. 1895; re-en. Sec. 4322, Rev. C. 1907; re-en. Sec. 6556, R.C.M. 1921; re-en. Sec. 6556, R.C.M. 1935; R.C.M. 1947, 72-506.

69-14-707. Liability for negligent destruction of domestic animals. Every railroad corporation or company operating any railroad or branch thereof within the limits of this state which shall negligently injure or kill any horse, mare, gelding, filly, jack, jenny, mule, cow, heifer, bull, ox, steer, calf, or other domestic animal by running any engine or car over or against any such animal shall be liable to the owner of such animal for the damages sustained by such owner by reason thereof. The killing or injury shall be prima facie evidence of negligence on the part of such corporation or company.

History: En. Sec. 1, p. 68, L. 1881; re-en. Sec. 713, 5th Div. Comp. Stat. 1887; amd. Sec. 951, Civ. C. 1895; re-en. Sec. 4309, Rev. C. 1907; re-en. Sec. 6541, R.C.M. 1921; re-en. Sec. 6541, R.C.M. 1935; R.C.M. 1947, 72-402.

69-14-708. Records of accidents involving animals. (1) It shall be the duty of any corporation, association, company, or person owning, controlling, or operating any railroad or branch thereof in this state to designate some station on the line of the same, in each county through which it passes, at which it shall keep a suitable book and within 30 days after the killing or injuring of any animal, to cause to be entered therein the date when and the place where the same was killed or injured, as near as may be, together with a description thereof, including the age, color, and sex of the same and marks and brands upon the same as near as the same can be done. When such railroad or branch thereof shall run to or through any town or station at which is located the county seat of any county, then such book shall be kept at such town or station at which said county seat is located, and the affidavit hereinafter provided for may be served on the agent of such station.

(2) This book shall be kept for the inspection of any person claiming to be interested in the inspection thereof.

(3) Notice of the station designated pursuant to subsection (1) shall be filed with the county clerk of the county in which said station is situated.

(4) Any corporation, association, or person so owning, controlling, or operating such railroad or branch thereof failing to designate said station, file said notice, keep said book, and make the entries as provided in this section shall be liable to the owner of the animal so killed or injured, whether negligently done or not, and the court or jury before whom any action is tried for the recovery of damages on account thereof may in its discretion render verdict and judgment for the amount of the value of any such animal so killed or the amount of damages sustained by reason of any injury thereto.

History: (1) thru (3)En. Sec. 3, p. 70, L. 1881; amd. Sec. 720, 5th Div. Comp. Stat. 1887; amd. Sec. 953, Civ. C. 1895; amd. Sec. 2, Ch. 29, L. 1905; re-en. Sec. 4311, Rev. C. 1907; re-en. Sec. 6542, R.C.M. 1921; re-en. Sec. 6542, R.C.M. 1935; Sec. 72-403, R.C.M. 1947; (4)En. Sec. 721, 5th Div. Comp. Stat. 1887; re-en. Sec. 954, Civ. C. 1895; re-en. Sec. 4312, Rev. C. 1907; re-en. Sec. 6543, R.C.M. 1921; re-en. Sec. 6543, R.C.M. 1935; Sec. 72-404, R.C.M. 1947; R.C.M. 1947, 72-403, 72-404.

69-14-709. Allowance of attorney's fee. (1) Except as provided in subsection (2), whenever any of the livestock referred to in this part shall be injured or killed as therein recited and the owner thereof shall thereafter institute an action for the recovery of the loss or damage so sustained by him, the court in which such action shall be brought shall tax, as a part of the costs therein, a reasonable sum to be fixed by the court as a fee to the attorney of the prevailing or successful party for conducting such action. Said fee so fixed and allowed shall be collected in like manner as other costs.

(2) No such fee shall be allowed by the court or collected from the defendant when it shall appear from the pleadings or proof in any such action that the defendant prior to the institution of such action offered or agreed to pay to the plaintiff therein, in settlement of the loss or damages claimed, a sum equal to or in excess of the amount recovered as damages in said action or unless the plaintiff, at least 40 days prior to the commencement of the action, shall have made demand, in writing, upon the defendant, his agent, or attorney for the sum of money claimed as indemnity for the killing of said livestock.

History: En. Sec. 722, 5th Div. Comp. Stat. 1887; amd. Sec. 955, Civ. C. 1895; amd. Sec. 1, Ch. 101, L. 1903; re-en. Sec. 4313, Rev. C. 1907; amd. Sec. 1, Ch. 99, L. 1919; amd. Sec. 1, Ch. 226, L. 1921; re-en. Sec. 6544, R.C.M. 1921; re-en. Sec. 6544, R.C.M. 1935; R.C.M. 1947, 72-405.

69-14-710. Tender or deposit of value of animal. If a corporation, association, company, or person so owning, controlling, or operating a railroad or branch thereof kills or injures an animal as aforesaid and tenders to the owner thereof or to his agent in that behalf the amount which they consider to be the value thereof or the damage thereto, as the case may be or if the railroad, corporation, association, company, or person deposits with the department of livestock such amount for the owner thereof and the owner or his agent refuses to accept the amount in settlement thereof, then the owner shall pay all costs incurred in any action instituted, after the tender or deposit, to recover the value or damage unless he recovers in the action more than the amount so tendered.

History: En. Sec. 723, 5th Div. Comp. Stat. 1887; re-en. Sec. 956, Civ. C. 1895; re-en. Sec. 4314, Rev. C. 1907; re-en. Sec. 6545, R.C.M. 1921; re-en. Sec. 6545, R.C.M. 1935; amd. Sec. 15, Ch. 315, L. 1974; R.C.M. 1947, 72-406.

69-14-711. Payment of damages to department of livestock. (1) If livestock are killed by railroad corporations in violation of 69-14-701 and if the owner of the livestock does not claim or assert a claim against the railroad or railroad corporation for the value of the livestock killed within 6 months from the date the animal is killed, the department of livestock shall demand from the railroad or railroad corporation payment in damages for livestock. The department shall institute and prosecute, in the name of the state, actions against the railroad or railroad companies in a court of competent jurisdiction to recover damages if the railroad fails, neglects, or refuses to make payment of the amount of the claim filed by the department.

(2) The money recovered shall be paid to the department and shall be held by the department for a period of 2 years after the date of its receipt. If the lawful owner of the animal killed does not present and prove his claim to the net proceeds received from the animal killed within the 2 years, the money shall be paid to the state treasurer and credited to the stock estray fund. If the owner of the animal killed proves his claim within the 2 years, the department may pay the claimant the amount of money to which he is

entitled for the animal killed by the railroad or railroad company, the damages for which have been collected by the department.

(3) In actions prosecuted for the recovery of the value of livestock killed under this section, the prevailing or successful party shall recover all costs. If the owner of an animal killed has not presented his claim against the railroad or railroad company which caused it to be killed, a settlement made by the department constitutes a bar against an action by the owner of the animal.

History: En. Sec. 1, Ch. 183, L. 1907; Sec. 4315, Rev. C. 1907; amd. Sec. 2, Ch. 99, L. 1919; re-en. Sec. 6546, R.C.M. 1921; re-en. Sec. 6546, R.C.M. 1935; amd. Sec. 16, Ch. 315, L. 1974; R.C.M. 1947, 72-407.

69-14-712. Disposition of carcass and hide of destroyed animals. (1) In all cases where a corporation, association, company, or person kills an animal or injures an animal to such extent that it is necessary to kill the animal, as provided in this part, they shall skin the animal and preserve the whole hide or so much thereof as can be preserved, including the head and ears, and are entitled to the carcass and hide thereof unless the owner or owners thereof claim the animal, in which event the amount of the value thereof shall be deducted from the amount of damages which would otherwise be due. In case such corporation, association, company, or person so entitled thereto takes the carcass and hide, they shall skin the animal as herein provided and shall deposit the hide thereof at the station designated on their line, such station to be designated by the department of livestock, during the space of 60 days, for the inspection of persons claiming to be interested therein. If no person claims the animal, then before the corporation, association, company, or person disposes of the hide, they shall notify the stock inspector of the district within which the animal was killed, who shall inspect the hide for marks and brands, and receive from the stock inspector his authority in writing to dispose of the hide. The stock inspector shall notify all owners of the stock, if known or ascertainable from the inspection, of the death of the animal, and if the owner is unknown, the stock inspector shall notify the department of the death of the animal.

(2) The corporation, association, company, or person may dispose of the whole animal, including the carcass and hide, to any licensed rendering plant or licensed renderer in the state if the owner or owners do not claim the animal. Upon receiving the animal, the licensed rendering plant or licensed renderer shall skin the animal and shall preserve the hide or so much thereof as can be preserved, including the hide of head and ears, and the hide shall be stored separate and apart from hides received from other sources. Within 5 days after receipt of the hide, the licensed rendering plant or licensed renderer shall notify the department of possession of the hide. The department shall make an inspection thereof within 10 days after being so notified and shall immediately notify the owner thereof, if ownership be ascertainable, of the death of the animal. If no person claims the hide of the animal within 30 days after notice given to the department by the licensed renderer or licensed rendering plant, the department shall give written authorization to the licensed rendering plant or licensed renderer to dispose of the hide. Before making disposition thereof under the written authorization, the licensed rendering plant or licensed renderer shall obtain the consent of the

corporation, association, company, or person from which the animal was received.

History: En. Sec. 726, 5th Div. Comp. Stat. 1887; re-en. Sec. 958, Civ. C. 1895; re-en. Sec. 4317, Rev. C. 1907; amd. Sec. 3, Ch. 99, L. 1919; re-en. Sec. 6548, R.C.M. 1921; re-en. Sec. 6548, R.C.M. 1935; amd. Sec. 1, Ch. 147, L. 1949; amd. Sec. 17, Ch. 315, L. 1974; R.C.M. 1947, 72-409.

69-14-713. Violation of provisions dealing with injury to livestock. (1) Except as otherwise provided, every person who violates any of the provisions of 69-14-701 through 69-14-712 relating to livestock killed or injured by railroads is guilty of a misdemeanor.

(2) Any person violating any of the provisions of 69-14-711 or 69-14-712 shall upon conviction thereof be punished by a fine of not less than $10 or more than $300 or by imprisonment in the county jail for a period of not less than 10 days or more than 60 days or by both such fine and imprisonment.

History: (1)En. Sec. 720, Pen. C. 1895; re-en. Sec. 8561, Rev. C. 1907; re-en. Sec. 11278, R.C.M. 1921; re-en. Sec. 11278, R.C.M. 1935; Sec. 94-35-174, R.C.M. 1947; redes. 72-507 by Sec. 29, Ch. 513, L. 1974; Sec. 72-507, R.C.M. 1947; (2)En. Sec. 4, Ch. 99, L. 1919; amd. Sec. 1, Ch. 49, L. 1921; re-en. Sec. 6549, R.C.M. 1921; re-en. Sec. 6549, R.C.M. 1935; Sec. 72-410, R.C.M. 1947; R.C.M. 1947, 72-410, 72-507; amd. Sec. 51, Ch. 43, L. 1979.

69-14-714 through 69-14-720 reserved.

69-14-721. Control of fire hazard along right-of-way. It shall be the duty of all railroad corporations or railroad companies operating any railroad within this state to keep their railroad track and either side thereof for a distance of 100 feet on each side of the track or roadbed, so far as it passes through any portion of this state, free from dead grass, weeds, or any dangerous or combustible material. Any railroad company or corporation failing to keep its railroad track and each side thereof free as specified above shall be liable for any damages which may occur from fire emanating from operating such railroad. A neglect to comply with the provisions of this section in keeping free any railroad track and either side for a distance equal to the space of ground covered by the grant of the right-of-way for the railroad corporation or company shall be prima facie evidence of negligence on the part of any such railroad corporation or company. No railroad corporation or company shall be required to keep free, as specified above, any land not a part of its right-of-way.

History: En. Sec. 7, p. 71, L. 1881; re-en. Sec. 719, 5th Div. Comp. Stat. 1887; amd. Sec. 952, Civ. C. 1895; re-en. Sec. 4310, Rev. C. 1907; re-en. Sec. 6551, R.C.M. 1921; re-en. Sec. 6551, R.C.M. 1935; R.C.M. 1947, 72-501.

69-14-722. Maintenance of fireguards. (1) Every railroad corporation operating its lines of road or any part thereof within this state shall, between April 15 and July 1 in each year, plow in a good and workmanlike manner, covering the sod well, upon each side of its line of road, wherever it passes through a range or grazing country, a continuous strip of not less than 6 feet in width on each side of its track, as a fireguard. Said strip shall, as near as practicable, run parallel with the line or lines of said railroad, and in addition to such plowing, said railroad company shall cause to be burned, between July 15 and September 15 of each year, all the grass and vegetation between the said plowed strips and a line of 50 feet inside said plowed strips. Said plowing shall be not less than 300 feet from the center of the railroad track on each side of same except in cases of cultivated fields, and then such plowing and burning shall be done closer to such railroad but not less than 70 feet from the center of the track.

(2) Such fireguard, so plowed and burned, need not be constructed within the limits of any town, village, or city; in private fields under cultivation; along the line of such railroad whenever the same runs through the mountains; or elsewhere where such plowing or burning would be impracticable. Said fireguard or portion thereof need not be plowed or burned on or through any lands which may be released from the operation of this section by the board of county commissioners of the county wherein such land is situated, by their written certificate of release filed in the office of the county clerk of the county.

(3) If any railroad company fails to comply with any of the provisions of this section, the board of county commissioners of the county wherein such violation occurs shall cause the neglected plowing, burning, or both to be done and may, in a suit to be brought in their name as said board in the district court having jurisdiction, recover double the amount of the cost of such plowing, burning, or both, with reasonable attorney fees to be fixed by the court. Such railroad company shall be liable further for all damages caused by its failure to comply with this section.

History: (1), (2)En. Sec. 1, p. 163, L. 1901; amd. Sec. 1, Ch. 63, L. 1903; re-en. Sec. 4360, Rev. C. 1907; re-en. Sec. 6597, R.C.M. 1921; re-en. Sec. 6597, R.C.M. 1935; Sec. 72-642, R.C.M. 1947; (3)En. Sec. 2, p. 164, L. 1901; amd. Sec. 2, Ch. 63, L. 1903; re-en. Sec. 4361, Rev. C. 1907; re-en. Sec. 6598, R.C.M. 1921; re-en. Sec. 6598, R.C.M. 1935; Sec. 72-643, R.C.M. 1947; R.C.M. 1947, 72-642, 72-643.

Part 8

Loading Platforms and Spurs

69-14-801. Maintenance of loading platform by railroad. (1) Every railroad company doing business in this state shall, within 60 days after notice from the commission, erect one or more platforms for the transfer of livestock, grain, and other commodities from wagons or otherwise to cars at each and every station or siding designated in such notice, such platforms to be erected so as not to endanger life and property.

(2) If any railroad company, after receiving notice as provided for in this section, shall fail, refuse, or neglect to erect platforms as required by this section within the required 60 days, the commission is authorized and empowered and it is made its duty to notify such railroad company to appear before it at a certain time and place and show cause, if there is any, why such commission should not issue an order requiring such railroad company to comply with the requirements of this section. The commission shall have power, after such hearing, to issue an order upon said railroad company commanding it to erect such platform if the commission shall upon such examination and hearing deem such platform necessary.

(3) Any notice required to be served upon any railroad company to carry out any of the provisions of this section or similar provisions relating to the enlarging of such platforms may be served upon any agent of said company within the state.

History: En. Sec. 1, Ch. 26, L. 1913; re-en. Sec. 3822, R.C.M. 1921; re-en. Sec. 3822, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-145; amd. Sec. 1, Ch. 108, L. 1979.

69-14-802. Repealed. Sec. 2, Ch. 108, L. 1979.

History: En. Sec. 2, Ch. 26, L. 1913; re-en. Sec. 3823, R.C.M. 1921; re-en. Sec. 3823, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-146; amd. Sec. 52, Ch. 43, L. 1979.

69-14-803. Enlargement of platform. The commission shall have power to order an enlargement of such platforms whenever petitioned to that effect and whenever the capacity of such platform is, in its judgment, clearly insufficient for the accommodation of the public.

History: En. Sec. 3, Ch. 26, L. 1913; re-en. Sec. 3824, R.C.M. 1921; re-en. Sec. 3824, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-147.

69-14-804. Erection of scales. Every railroad company shall allow suitable scales to be erected either upon the platform or upon the grounds adjacent thereto, if upon their right-of-way, for weighing and shipping purposes.

History: En. Sec. 4, Ch. 26, L. 1913; re-en. Sec. 3825, R.C.M. 1921; re-en. Sec. 3825, R.C.M. 1935; R.C.M. 1947, 72-148.

69-14-805. Violations of loading platform provisions. Every railroad company neglecting or refusing to comply with the requirements of 69-14-801 through 69-14-805 shall be deemed guilty of a misdemeanor and be subject to a fine of not less than $500 for every 30 days such failure shall continue after notice as aforesaid.

History: En. Sec. 5, Ch. 26, L. 1913; re-en. Sec. 3826, R.C.M. 1921; re-en. Sec. 3826, R.C.M. 1935; R.C.M. 1947, 72-149.

69-14-806 through 69-14-810 reserved.

69-14-811. Industrial and commercial spurs. (1) Except as provided in subsection (2), the commission shall have full power and authority, after notice and hearing, to compel railroad companies operating in the state to construct industrial or commercial spurs to industries when there is or will be sufficient traffic to require such facilities. Any such industrial or commercial spur shall be constructed pursuant to the usual and customary contract of the particular railroad company in constructing such spurs.

(2) (a) Any such industrial or commercical spur will not exceed 1 mile in length from headblock to end of track.

(b) Such industrial or commercial spur shall not be ordered constructed except within the limits of extreme switches of stations or yards or at sidings unless such stations, yards, sidings, or spurs are more than 7 miles apart or unless such spurs can be so placed as to be reasonably safe and not unnecessarily interfere with main-line operation.

History: En. Sec. 4, Ch. 136, L. 1909; re-en. Sec. 3829, R.C.M. 1921; re-en. Sec. 3829, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-152.

69-14-812. Power of commission with respect to sidetracks, stockyards, and chutes. The commission shall have full power and authority, after notice and hearing, to compel railroads, railways, or common carriers operating within the state to construct or extend public loading or unloading tracks at stations and shall likewise have full power and authority to compel the construction or extension of stockyards, stockchutes, or stockpens whenever the necessity therefor has been established to the satisfaction of the commission.

History: En. Sec. 3, Ch. 105, L. 1913; re-en. Sec. 3837, R.C.M. 1921; re-en. Sec. 3837, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; amd. Sec. 1, Ch. 464, L. 1975; R.C.M. 1947, 72-159(part).

69-14-813. Removal of sidetrack, spur track, or loading facility. (1) Where a sidetrack, spur track, or loading and unloading facility has been constructed for and used exclusively by a single shipper or industry and is not used by the public and the individual shipper or industry requests that such track or facility be removed from its property, then such removal may be made by giving notice of such request for removal to the commission and without necessity for approval of such removal.

(2) In the event such sidetrack, spur track or stock facility formerly used by the public has not been used by the public for loading or unloading rail shipments for a period of 5 years and proof thereof is established by affidavit of a railroad officer having knowledge thereof, then such installation or facility may be removed after the railroad involved has given 90 days' notice to the public service commission and to the consumer counsel unless the commission, within the 90-day period, notifies the railroad that such removal may not be made until approval by the commission. In which case, the commission shall set a public hearing, within 90 days of such notice to the railroad, to determine whether public convenience and necessity requires the continued maintenance of such installation or facility.

History: En. Sec. 3, Ch. 105, L. 1913; re-en. Sec. 3837, R.C.M. 1921; re-en. Sec. 3837, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; amd. Sec. 1, Ch. 464, L. 1975; R.C.M. 1947, 72-159(part).

69-14-814. Violations of sidetrack, spur track, or loading facility provisions. Any railroad, railway company, or common carrier and its officers or agents who shall refuse or fail to comply with the provisions of 69-14-812 or 69-14-813 or any order or rule relative thereto made by the commission shall be subject to a fine of not less than $25 or more than $50. Each day of such refusal or failure shall be deemed a separate offense and shall be subject to the penalty herein prescribed, such fine to be recovered in a civil action upon complaint of the commission in any court of competent jurisdiction.

History: En. Sec. 7, Ch. 105, L. 1913; re-en. Sec. 3841, R.C.M. 1921; re-en. Sec. 3841, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-163(part).

Part 9

Grain and Commodity Storage and Transportation

69-14-901. Authorization to locate and erect grain warehouse or elevator on railroad right-of-way. (1) Any person, firm, or corporation desirous of erecting and operating at or contiguous to any railway station or siding a warehouse or elevator for the purchase, sale, shipment, or storage of grain (including flaxseed) for the public for hire may make application in writing, containing a description of that portion of the right-of-way of said railroad on which such person, firm, or corporation desires to erect a warehouse or elevator, the size and capacity of the warehouse or elevator proposed to be erected, and the time for which it is desired to maintain such warehouse or elevator, to the person, firm, or corporation owning, leasing, or operating the railroad at such station or siding, for the right, privilege, and easement of erecting and maintaining for the time stated in such application and for reasonable compensation for such warehouse or elevator, as aforesaid, upon the right-of-way pertaining to such railway at such siding or station and within and between the outside switches of the yard of such railway station or siding, and upon paying or securing in the manner hereinafter prescribed reasonable compensation for the right, privilege, and easement aforesaid, shall absolutely and unconditionally be entitled to the same.

(2) The application shall also state the amount the applicant deems reasonable compensation for the right, privilege, and easement he desires to acquire, and said applicant shall tender and pay to such person, firm, or corporation from whom such easement is sought the sum stated in such application.

(3) If the person, firm, or corporation owning, leasing, or operating the railroad is not willing that the portion of the right-of-way selected by the applicant should be appropriated for such purpose and the parties cannot agree as to the quantity and location of the land upon which such grain warehouse or grain elevator shall be erected, the matter shall be determined by the district court in the same manner and by the same proceeding for determining the amount of compensation to be paid where the parties cannot agree as to the amount.

History: **(1), (3)En. Sec. 1, Ch. 43, L. 1913; re-en. Sec. 6638, R.C.M. 1921; re-en. Sec. 6638, R.C.M. 1935; Sec. 88-201, R.C.M. 1947; (2)En. Sec. 2, Ch. 43, L. 1913; re-en. Sec. 6639, R.C.M. 1921; re-en. Sec. 6639, R.C.M. 1935; Sec. 88-202, R.C.M. 1947; R.C.M. 1947, 88-201, 88-202(part).**

69-14-902. Decision on application by railroad. It shall be the duty of any person, firm, or corporation to whom application is made for the right to erect and maintain an elevator or warehouse under the provisions of 69-14-901 through 69-14-911, within 30 days after the receipt of such application, to notify said applicant in writing of the acceptance or rejection of the amount stated in said application to be reasonable compensation for the right, privilege, and easement sought to be acquired. In case such person, firm, or corporation fails to notify the applicant within said 30 days, such person, firm, or corporation shall be deemed to have accepted said amount, and upon the payment or tender thereof, said applicant shall be deemed to have acquired the right, privilege, and easement applied for.

History: **En. Sec. 2, Ch. 43, L. 1913; re-en. Sec. 6639, R.C.M. 1921; re-en. Sec. 6639, R.C.M. 1935; R.C.M. 1947, 88-202(part).**

69-14-903. Court action to resolve differences. (1) In case the amount so named in the application and tendered is not accepted and the parties cannot agree on the amount to be paid for such right, privilege, and easement, the same shall be ascertained, assessed, and determined by proceedings in the district court of the county in which the station or siding at which the right, privilege, and easement sought is situated. The court is hereby given full jurisdiction in the premises and shall at all times be deemed open and in session for the purposes of 69-14-901 through 69-14-911.

(2) Proceedings in the district court shall be instituted and carried on as provided in 69-14-904.

History: **(1)En. Sec. 2, Ch. 43, L. 1913; re-en. Sec. 6639, R.C.M. 1921; re-en. Sec. 6639, R.C.M. 1935; Sec. 88-202, R.C.M. 1947; (2)En. Sec. 3, Ch. 43, L. 1913; re-en. Sec. 6640, R.C.M. 1921; re-en. Sec. 6640, R.C.M. 1935; Sec. 88-203, R.C.M. 1947; R.C.M. 1947, 88-202(part), 88-203(part).**

69-14-904. Procedure in district court. (1) The parties seeking the right, privilege, and easement aforesaid shall present to and file with the district court a petition in writing and under oath, specifying and describing the right, privilege, and easement sought, the time for which the same is sought, and the fact that the parties to the proceedings are unable to agree upon the amount of compensation therefor.

(2) A copy of the application for such privilege shall be attached to said petition, and thereupon it shall be at once the duty of the court by its order in writing to fix a time not more than 30 days thereafter within which the person, firm, or corporation so owning, managing, or controlling such railroad shall appear and join issue in said proceeding. Such notice shall be served as a summons is served in civil actions and shall be ample notice to the parties so served to appear and join in the proceedings and shall be ample to give the court full jurisdiction over the party against whom the proceedings are instituted and the property involved in the proceeding.

(3) The manner of joining issue and the procedure at the trial shall be the same as that in any other civil action at law.

(4) The trial of such issue shall be expedited by the court as much as possible. At the trial the court or jury, as the case may be, shall find and assess the compensation, both in the form of an annual rental and in the form of a gross sum, for the right, privilege, and easement sought. Immediately after the finding or verdict has been made, the party against whom the proceedings have been taken shall elect whether to receive the annual rental or the gross sum found. In case such election is not made by said party, then the other party to the proceedings may make such election. After election is made as aforesaid, judgment shall be rendered adjudging, among other things, that upon payment of the gross sum found or the annual rental found, yearly in advance, as the case may be, the party instituting the proceedings shall be entitled to the right, privilege, and easement of erecting and maintaining the elevator or warehouse asked for in the application and petition aforesaid and for the time therein specified. Thereupon the party in whose favor said judgment is rendered shall be entitled to a writ of execution in proper form to immediately invest such party with the right, privilege, and easement aforesaid.

History: **En. Sec. 3, Ch. 43, L. 1913; re-en. Sec. 6640, R.C.M. 1921; re-en. Sec. 6640, R.C.M. 1935; R.C.M. 1947, 88-203(part).**

69-14-905. Right to supreme court review. Within 30 days after the entry of said judgment, as hereinbefore provided, but not later, an appeal may be taken by either party to the supreme court. Such appeal shall not stay or hinder the use or enjoyment to the fullest extent of the right, privilege, and easement asked for by the petition and conferred by the judgment if the party instituting the proceedings shall make and file a bond with sureties, to be approved by the court, in an amount double the gross sum or annual rental, conditioned to pay such sum or rental and to abide and satisfy any judgment the supreme court may render in the premises. Either party may appeal from that part of the judgment determining the quantity and location of the land upon which such warehouse or elevator is to be erected, and in the event of such appeal, the judgment shall be suspended pending the appeal.

History: **En. Sec. 4, Ch. 43, L. 1913; re-en. Sec. 6641, R.C.M. 1921; re-en. Sec. 6641, R.C.M. 1935; R.C.M. 1947, 88-204(part).**

69-14-906. Payment of court costs. Costs and disbursements, as in civil actions, in each court shall be paid by the unsuccessful party. If the finding of the court or jury is for a less or the same amount as tendered by the petitioner before instituting the proceedings, then the petitioner shall be deemed the successful party. If the amount found is larger than the sum tendered, then the petitioner shall be deemed the unsuccessful party.

History: En. Sec. 4, Ch. 43, L. 1913; re-en. Sec. 6641, R.C.M. 1921; re-en. Sec. 6641, R.C.M. 1935; R.C.M. 1947, 88-204(part).

69-14-907. Elevators and warehouses considered public. All elevators and warehouses erected and maintained under the provisions of 69-14-901 through 69-14-911 shall be deemed public elevators and public warehouses and shall be subject to legislative control.

History: En. Sec. 5, Ch. 43, L. 1913; re-en. Sec. 6642, R.C.M. 1921; re-en. Sec. 6642, R.C.M. 1935; R.C.M. 1947, 88-205.

69-14-908. Prompt payment of rental required. In case the annual rental is elected, the same shall be paid yearly in advance, and if not so paid after 30 days' default, the right, privilege, and easement aforesaid shall be absolutely forfeited.

History: En. Sec. 3, Ch. 43, L. 1913; re-en. Sec. 6640, R.C.M. 1921; re-en. Sec. 6640, R.C.M. 1935; R.C.M. 1947, 88-203(part).

69-14-909. Time limit for construction of elevator or warehouse. Any person, firm, or corporation availing itself of the provisions of 69-14-901 through 69-14-911 shall, within 60 days after the amount to be paid for the easement acquired thereunder is finally determined, by agreement or by proceedings in court, commence the erection of the warehouse or elevator mentioned in the application and complete the same within 90 days thereafter. In case of failure to comply with the provisions of this section, such person or persons shall be deemed to have abandoned the right acquired, and the part or portion of the railroad right-of-way described in the application shall be subject to selection by other applicants who may desire to avail themselves of the provisions of 69-14-901 through 69-14-911.

History: En. Sec. 6, Ch. 43, L. 1913; re-en. Sec. 6643, R.C.M. 1921; re-en. Sec. 6643, R.C.M. 1935; R.C.M. 1947, 88-206.

69-14-910. Connection of railroad to elevator or warehouse. (1) Every railroad company or corporation organized under the laws of this state or doing business therein shall, upon application in writing, provide reasonable sidetrack facilities and running connections between its main track and elevators and warehouses upon or contiguous to its right-of-way at stations. Every such railroad corporation shall permit connections to be made and maintained in a reasonable manner with its sidetracks to and from any warehouse or elevator, without reference to its size, cost, or capacity, where grain is or may be stored. Such railroad company shall not be required to construct or furnish any sidetracks except upon its own land or right-of-way. The reasonable cost of the construction of such sidetracks and connections, except the cost of the rails and fastenings, shall be paid by the person or persons for whose benefit such sidetracks are provided or connections made.

(2) Where stations are 10 miles or more apart, the railroad company, when required to do so by the public service commission, shall construct and maintain a sidetrack for the use of shippers between such stations.

History: En. Sec. 7, Ch. 43, L. 1913; re-en. Sec. 6644, R.C.M. 1921; re-en. Sec. 6644, R.C.M. 1935; amd. Sec. 21, Ch. 315, L. 1974; R.C.M. 1947, 88-207(part).

69-14-911. Location of facility. Such elevators and warehouses shall not be constructed within 100 feet of any existing structure and shall be at safe fire distance from the station buildings and so as not essentially to conflict with the safe and convenient operation of the road.

History: En. Sec. 7, Ch. 43, L. 1913; re-en. Sec. 6644, R.C.M. 1921; re-en. Sec. 6644, R.C.M. 1935; amd. Sec. 21, Ch. 315, L. 1974; R.C.M. 1947, 88-207(part).

69-14-912 through 69-14-920 reserved.

69-14-921. Suitable cars to be furnished for shipment of grain and other commodities in bulk. (1) All boxcars furnished by railroad or railway companies for the transportation of grain or other commodities in bulk shall be of such construction and in such order as to prevent leakage when such commodities are placed or hauled therein. It is hereby made the duty of all railroad or railway companies to furnish such cars in such condition.

(2) Whenever boxcars placed for loading grain or other commodities in bulk are found to be in such condition that they will not afford safe transportation for such commodities, the railroad or railway company shall, upon written complaint to the agent or other person in authority by the shipper or his representative who proposes to load said car or cars and within 24 hours, cause said car or cars to be properly cleaned and coopered and put in such repair as will afford safe transportation for the commodity to be shipped.

History: (1)En. Sec. 1, Ch. 52, L. 1917; re-en. Sec. 6613, R.C.M. 1921; re-en. Sec. 6613, R.C.M. 1935; Sec. 72-656, R.C.M. 1947; (2)En. Sec. 2, Ch. 52, L. 1917; re-en. Sec. 6614, R.C.M. 1921; re-en. Sec. 6614, R.C.M. 1935; Sec. 72-657, R.C.M. 1947; R.C.M. 1947, 72-656, 72-657.

69-14-922. Action by shipper to render cars suitable. (1) In case such railroad or railway company shall fail within 24 hours after written complaint has been made by the shipper or his representative to clean and safely cooper such car or cars, then such shipper or his representative shall have authority to enter upon such car or cars and properly and safely cooper and clean the same. Said railroad or railway company shall pay for the labor expended in such repairs at the rate of $3 per 8-hour day and the actual cost of material used, providing that such charge shall in no case exceed $5 for each car so coopered.

(2) In case any car or cars are placed at a station or siding where there is no representative of said railroad or railway company upon whom complaint may be served, then and in such case the shipper or his representative may at once enter upon the said car or cars and clean and make such repairs as are necessary and shall be paid for the labor and material expended, as provided in subsection (1).

History: (1)En. Sec. 3, Ch. 52, L. 1917; re-en. Sec. 6615, R.C.M. 1921; re-en. Sec. 6615, R.C.M. 1935; Sec. 72-658, R.C.M. 1947; (2)En. Sec. 4, Ch. 52, L. 1917; re-en. Sec. 6616, R.C.M. 1921; re-en. Sec. 6616, R.C.M. 1935; Sec. 72-659, R.C.M. 1947; R.C.M. 1947, 72-658, 72-659.

69-14-923. Demurrage not to accrue during repairs. It is further provided that no demurrage shall accrue or be collected for the time elapsing while such car or cars are being repaired or cleaned or coopered in accordance herewith.

History: En. Sec. 5, Ch. 52, L. 1917; re-en. Sec. 6617, R.C.M. 1921; re-en. Sec. 6617, R.C.M. 1935; R.C.M. 1947, 72-660.

69-14-924. Liability of railroad for repairs. Any person making the repairs upon or cleaning or coopering the cars of any railroad or railway company as herein provided may recover the amounts expended therefor in an action at law upon the refusal of the railroad or railway company to reimburse him.

History: En. Sec. 6, Ch. 52, L. 1917; re-en. Sec. 6618, R.C.M. 1921; re-en. Sec. 6618, R.C.M. 1935; R.C.M. 1947, 72-661.

69-14-925. Enforcement of provisions related to suitable cars for commodity shipments. It is hereby made the duty of the commission to enforce the provisions of 69-14-921 through 69-14-924.

History: En. Sec. 7, Ch. 52, L. 1917; re-en. Sec. 6619, R.C.M. 1921; re-en. Sec. 6619, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-662.

Part 10

Railroad Personnel

69-14-1001. Protection of employees affected by closure of station or other facility. (1) Whenever any railroad, as defined in 69-14-101, is granted the authority to close a railroad station or facility by order of the commission, the commission shall require employee protection. Before the commission may approve closure of a station or facility, it shall require from the railroad an agreement to protect employees affected by the closure by providing jobs equal in nature and pay to the job held by the employee for the 6 months prior to the closure. The equal job and pay agreement must be in effect for a period of 4 years or, in the alternative, the number of years the employee has been employed prior to closure, whichever is shorter.

(2) Notwithstanding any other provisions of this section, an agreement pertaining to protection of the interests of affected employees may be entered into between the railroad and duly authorized representatives of the employees.

History: En. Sec. 1, Ch. 377, L. 1973; R.C.M. 1947, 72-169; amd. Sec. 53, Ch. 43, L. 1979.

69-14-1002. Compensation of employees on removal of railroad division point or terminal. (1) Except as provided in subsection (2), when any railroad or railway company operating its line of road in, into, or through the state shall move any of its division points or terminals, it shall be liable to any employee of such railroad or railway company for any damage sustained by such employee by reason of any decrease in value of any real property actually occupied by such employee as his place of residence, which decrease in value shall be caused by reason of the removal of such division point or terminal; provided, such employee shall have in such property so damaged an estate of freehold. Such damages shall be collectable in any court of competent jurisdiction.

(2) When any railroad or railway company in good faith determines upon a change or removal of any division point or terminal and in good faith posts prominently about its station house, shops, and yards a statement of its intention to do so, in such manner as to give reasonable notice thereof to such employee, it shall not be liable, as hereinbefore provided, for any decrease in value of any interest in any property purchased after the time of such posting provided that such division point or terminal shall be changed or removed within 6 months after the date of such posting.

History: (1)En. Sec. 1, Ch. 159, L. 1921; re-en. Sec. 6623, R.C.M. 1921; re-en. Sec. 6623, R.C.M. 1935; Sec. 72-666, R.C.M. 1947; (2)En. Sec. 2, Ch. 159, L. 1921; re-en. Sec. 6624, R.C.M. 1921; re-en. Sec. 6624, R.C.M. 1935; Sec. 72-667, R.C.M. 1947; R.C.M. 1947, 72-666, 72-667.

69-14-1003. Railroad personnel as law officers. Every conductor, engineer, or other person in charge of the operation of cars, trains, or locomotives upon any railroad is, while so engaged or employed, constituted a public executive officer of the class of peace officers and of the grade of constable in each county wherein his train, cars, or locomotives may from time to time happen to be and has the same authority as other peace officers to, with or without a warrant, arrest and prosecute persons trespassing or illegally obtaining passage on the railroad. The railroad personnel mentioned herein shall not be entitled to receive fees for any arrest or prosecution which may be made or prosecuted under this section. None of the railroad personnel herein named shall be authorized to hold said office or exercise its functions unless at the time they are citizens of the United States and have been citizens of this state for at least 1 year preceding their exercising the functions thereof.

History: En. Sec. 3, p. 150, L. 1899; re-en. Sec. 8884, Rev. C. 1907; re-en. Sec. 11570, R.C.M. 1921; re-en. Sec. 11570, R.C.M. 1935; Sec. 94-35-203, R.C.M. 1947; redes. 72-672 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 72-672; amd. Sec. 54, Ch. 43, L. 1979.

69-14-1004. Penalty for intoxication while engaged in train operations. Every person who is intoxicated while in charge of a locomotive engine while as conductor or driver upon any railroad car or train, whether propelled by steam or otherwise, or while acting as train dispatcher or as telegraph operator receiving or transmitting dispatches in relation to the movement of trains is guilty of a misdemeanor.

History: En. Sec. 690, Pen. C. 1895; re-en. Sec. 8521, Rev. C. 1907; re-en. Sec. 11253, R.C.M. 1921; Cal. Pen. C. Sec. 391; re-en. Sec. 11253, R.C.M. 1935; Sec. 94-35-109, R.C.M. 1947; redes. 72-671 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 72-671.

69-14-1005. Medical aid for injured trainmen. (1) In case any railroad trainman or employee of any railroad doing business in this state shall be injured during his regular course of employment, any employee of said railroad is hereby empowered and authorized to call upon and retain the services of the nearest practicing physician or surgeon to care for and treat any such injured trainman or employee, during and until such time as one of the regularly employed and paid physicians or surgeons of such railroad corporation is able to render such service.

(2) In cases where the services of any physician or surgeon other than the regularly employed physician or surgeon of the railroad corporation are retained and hired, as provided in this section, such physician or surgeon

shall be compensated and paid a reasonable fee for such services performed by him.

(3) If any railroad corporation refuses or neglects to pay for the services of any such physician as hereinbefore provided for within a reasonable time after such physician or surgeon has rendered the services therefor, such railroad corporation shall be guilty of a misdemeanor.

History: (1)En. Sec. 1, Ch. 95, L. 1909; amd. Sec. 1, Ch. 45, L. 1921; re-en. Sec. 6602, R.C.M. 1921; re-en. Sec. 6602, R.C.M. 1935; Sec. 72-645, R.C.M. 1947; (2)En. Sec. 2, Ch. 95, L. 1909; re-en. Sec. 6603, R.C.M. 1921; re-en. Sec. 6603, R.C.M. 1935; Sec. 72-646, R.C.M. 1947; (3)En. Sec. 3, Ch. 95, L. 1909; re-en. Sec. 6604, R.C.M. 1921; re-en. Sec. 6604, R.C.M. 1935; Sec. 72-647, R.C.M. 1947; R.C.M. 1947, 72-645, 72-646, 72-647.

69-14-1006. Liability for death or injury to railroad employees. (1) Every person or corporation operating a railroad in this state shall be liable in damages to any person suffering injury while he is employed by such person or corporation so operating any such railroad or, in case of the death of such employee, instantaneously or otherwise, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee and, if none, then of such employee's parents and, if none, then of the next of kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such person or corporation so operating such railroad, in or about the handling, movement, or operation of any train, engine, or car on or over such railroad or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment.

(2) (a) In all actions brought against any such person or corporation so operating such railroad, under or by virtue of any of the provisions of this section, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee; provided, that no such employee who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violation by such person or corporation, so operating such railroad, of any statute enacted for the safety of employees contributed to the injury or death of such employee.

(b) An employee of any such person or corporation so operating such railroad shall not be deemed to have assumed any risk incident to his employment when such risk arises by reason of the negligence of his employer or of any person in the service of such employer.

(3) Any contract, rule, or device whatsoever, the purpose or intent of which shall be to enable any such person or corporation so operating such railroad to exempt itself from any liability created by this section, shall, to that extent, be void. In any action brought against any such person or corporation so operating such railroad, under or by virtue of any of the provisions of this section, such person or corporation may set off therein any sum it has contributed or paid to any insurance, relief benefit, or indemnity that may have been paid to the injured employee or the person entitled thereto on account of the injury or death for which said action is brought.

History: (1)En. Sec. 1, Ch. 29, L. 1911; re-en. Sec. 6605, R.C.M. 1921; re-en. Sec. 6605, R.C.M. 1935; Sec. 72-648, R.C.M. 1947; (2)(a)En. Sec. 2, Ch. 29, L. 1911; re-en. Sec. 6606, R.C.M. 1921;

re-en. Sec. 6606, R.C.M. 1935; Sec. 72-649, R.C.M. 1947; (2)(b)En. Sec. 3, Ch. 29, L. 1911; re-en. Sec. 6607, R.C.M. 1921; re-en. Sec. 6607, R.C.M. 1935; Sec. 72-650, R.C.M. 1947; (3)En. Sec. 4, Ch. 29, L. 1911; re-en. Sec. 6608, R.C.M. 1921; re-en. Sec. 6608, R.C.M. 1935; Sec. 72-651, R.C.M. 1947; R.C.M. 1947, 72-648, 72-649, 72-650, 72-651.

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